

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CRIM. NO. 2013-22
)	
RAYMOND BROWN, WALTER HILL,)	
)	
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT

MOTIONS HEARING
(Omnibus/Suppression)

February 28, 2014

BEFORE: THE HONORABLE CURTIS V. GOMEZ
Chief Judge

APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY
BY: KELLY LAKE, AUSA
KIM LINDQUIST, AUSA

For the Government

ARTURO WATLINGTON, ESQ.

For Defendant Brown

JOSEPH MINGOLLA, ESQ.

For Defendant Hill

COURT REPORTER: CHANDRA R. KEAN, RMR
Official Court Reporter
Virgin Islands District Court
St. Thomas, Virgin Islands

INDEX

COURT QUESTIONS OF DEFENDANT					5
<u>WITNESS (Government)</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	
Shawn Querrard	9, 36	21, 42	---	---	
Rafael A. Fernandez	54	57	---	---	
ARGUMENT BY THE GOVERNMENT					62
ARGUMENT BY THE DEFENDANT					65
RULING BY THE COURT					69

(Court recessed)

PROCEEDINGS

(Court called to order at 10:00 a.m.)

10:00:34 4 THE CLERK: United States of America versus
10:00:36 5 Raymond Brown. United States of America versus Walter
10:00:40 6 Hill.

10:00:41 7 MS. LAKE: Good morning, Your Honor. Kelly
10:00:42 8 Lake and Kim Lindquist for the government.

10:00:44 9 THE COURT: Okay. Good morning again.

10:00:46 10 MR. WATLINGTON: Good morning, Your Honor.
10:00:47 11 Arturo Watlington for Raymond Brown.

10:00:50 12 THE COURT: Okay. Good morning, Attorney
10:00:51 13 Watlington.

10:00:53 14 MR. MINGOLLA: Good morning, Judge. Joe
10:00:54 15 Mingolla here on behalf of Mr. Walter Hill, who is
10:00:57 16 present in court and to my right.

10:01:01 17 THE COURT: Good morning, Attorney Mingolla.
10:01:02 18 We're here for a suppression hearing.

10:01:04 19 Attorney Watlington, I saw a filing, I think
10:01:07 20 yesterday, that you were withdrawing your petition for
10:01:10 21 suppression. Is that correct?

10:01:13 22 MR. WATLINGTON: Yes, Your Honor. We did file
10:01:14 23 it after the close of business.

10:01:15 24 We had informed the U.S. attorney that we were
10:01:18 25 satisfied with the information that was shared with us

10:01:20 1 during the conference that we had last week. I
10:01:24 2 discussed this matter with my client on yesterday and
10:01:26 3 on -- I'm sorry, on Tuesday and Wednesday -- yesterday,
10:01:34 4 and he has no objection thereto. All of that is
10:01:39 5 encompassed -- embodied in my motion and, thus, I
10:01:43 6 believe we don't have an issue before this Court to
10:01:45 7 participate in the suppression hearing today.

10:01:47 8 THE COURT: And you want to be excused from
10:01:49 9 this hearing?

10:01:50 10 MR. WATLINGTON: Yes, Your Honor. That's what
10:01:52 11 we requested in our motion.

10:01:54 12 We know that was late, so we did come this morning
10:01:57 13 to make sure that, in fact, the Court does not feel that
10:01:59 14 we were in any way being disrespectful in terms of not
10:02:02 15 being here. I, in fact, had talked to my client, and
10:02:05 16 that's why he's not here, and explained to him that
10:02:07 17 after we discussed the motion, and I would have filed
10:02:09 18 it. And he called me this morning and asked me, should
10:02:12 19 he come.

10:02:13 20 I told him, well, I don't believe that the Court
10:02:15 21 will compel us to be -- to partake in the hearing once,
10:02:19 22 in fact, the Court is aware of our motion, and that it
10:02:22 23 was not necessary for him to leave his house.

10:02:24 24 THE COURT: All right. Good. The motion is
10:02:26 25 granted. So thank you for your consideration, and

10:02:29 1 you're excused.

10:02:30 2 MR. WATLINGTON: Thank you, Your Honor.

10:02:31 3 THE COURT: Thank you.

10:02:31 4 COURT QUESTIONS OF THE DEFENDANT

10:02:35 5 THE COURT: All right. Mr. Mingolla, that
10:02:37 6 leaves one issue with you, is that correct?

10:02:41 7 Why don't you tell us, what is the thing that you
10:02:45 8 seek to suppress?

10:02:47 9 MR. MINGOLLA: May I take the --

10:02:49 10 THE COURT: Yes.

10:02:59 11 MR. MINGOLLA: Your Honor, what I wish to
10:03:02 12 suppress is the conversation, the bugging, if you will,
10:03:12 13 as opposed to a phone tap of a conversation which took
10:03:16 14 place between Mr. Angelo Hill and my client, Mr. Walter
10:03:19 15 Hill, in the private parking lot of an automobile rental
10:03:28 16 agency, in an area where customers and private
10:03:34 17 individuals generally aren't allowed; hence it's private
10:03:44 18 property.

10:03:44 19 Your Honor --

10:03:46 20 THE COURT: All right. So it's a conversation
10:03:47 21 that took place in a parking lot between your client
10:03:50 22 and, who is the other person?

10:03:54 23 MR. MINGOLLA: A chap by the name of Angelo
10:03:56 24 Hill, his cousin.

10:03:57 25 THE COURT: All right. Angelo Hill and

10:03:58 1 Mr. Walter Hill.

10:03:59 2 And the date?

10:04:01 3 MR. MINGOLLA: October 20th, sir.

10:04:02 4 THE COURT: October 20th of what year?

10:04:06 5 MR. MINGOLLA: '13, 2013.

10:04:09 6 THE COURT: So a conversation that took place
10:04:10 7 on October 20th, 2013?

10:04:16 8 MR. MINGOLLA: Yes, sir.

10:04:17 9 THE COURT: All right.

10:04:18 10 MR. MINGOLLA: May I continue?

10:04:19 11 THE COURT: Is there -- yes. Tell me what
10:04:22 12 else -- what other things you wish to suppress. Is that
10:04:26 13 it?

10:04:27 14 MR. MINGOLLA: That's, that's it. I mean, I'm
10:04:29 15 not done. I mean, I am done -- I haven't even commenced
10:04:33 16 my argument, but that is what I wish to suppress.

10:04:38 17 THE COURT: I don't want argument now, just a
10:04:41 18 list of the things. That's it?

10:04:43 19 MR. MINGOLLA: And I also have, like a broken
10:04:46 20 record, we have been having tremendous difficulties with
10:04:50 21 ECF, so I assume and hope that Your Honor received a
10:04:53 22 motion in limine that we filed on the same day with this
10:04:57 23 chap who's been doing our ECF work, because Meyers,
10:05:03 24 Ms. Meyers quit, and she was the only one that had a
10:05:06 25 clue as to how to use it.

10:05:07 1 In any event, we filed a motion in limine regarding
10:05:10 2 a previous, a previous conviction --

10:05:14 3 THE COURT: All right. We'll deal with that
10:05:17 4 later.

10:05:19 5 MR. MINGOLLA: -- that was 20-some-odd years
10:05:22 6 ago.

10:05:22 7 THE COURT: And tell me, the October 20th,
10:05:25 8 2013, conversation. Tell me what the constitutional
10:05:28 9 infirmity is.

10:05:30 10 MR. MINGOLLA: I'm pretty -- I find rather
10:05:32 11 egregious violations of both the 4th, 6th and 14th
10:05:35 12 Amendments.

10:05:35 13 I find a blatant disregard in point of fact.

10:05:41 14 I unfortunately for me, excuse me, was handed the
10:05:54 15 case approximately four and a half months after everyone
10:06:00 16 else did, so if I'm repetitious or if I mentioned
10:06:03 17 arguments which others have argued, which there are so
10:06:06 18 many other issues which might be a trifle repetitive,
10:06:13 19 but I think they are variations on a theme that
10:06:16 20 certainly differentiate my client's --

10:06:18 21 THE COURT: Well, I'm not -- right now I just
10:06:20 22 wanted to know if you were going -- I know you're
10:06:24 23 arguing -- your petition is that there is some 4th
10:06:27 24 Amendment violation.

10:06:27 25 I didn't know if there was any more flesh you want

10:06:31 1 to put on it, if not right now, then I'll listen to you
10:06:35 2 later with your argument.

10:06:37 3 MR. MINGOLLA: I'm as fleshy as a wooly
10:06:42 4 mammoth, sir. I don't have any more flesh to proceed.
10:06:47 5 We're looking at a minimum of 15, 20 minutes maybe.

10:06:50 6 THE COURT: All right.

10:06:51 7 Attorney Lake, are you ready to proceed?

10:06:52 8 MS. LAKE: Yes, Your Honor.

10:06:53 9 THE COURT: All right. Go right ahead.

10:06:56 10 MS. LAKE: We're going to proceed by way of
10:06:58 11 argument, Your Honor. We have no witnesses to present
10:07:00 12 at this time.

10:07:07 13 MR. MINGOLLA: I'm sorry, I didn't hear the
10:07:08 14 question.

10:07:09 15 THE COURT: Do you have any witnesses?

10:07:10 16 MS. LAKE: The government has no witnesses,
10:07:11 17 Your Honor. We're prepared to argue the defendant's
10:07:13 18 motion.

10:07:16 19 THE COURT: All right. Well, there's no
10:07:20 20 evidence before me now on the manner in which the
10:07:22 21 conversation was received.

10:07:32 22 MS. LAKE: Your Honor, the government filed a
10:07:34 23 motion in opposition, and in that motion in opposition
10:07:37 24 represented that the conversations between Angelo Hill
10:07:39 25 and Walter Hill was a consensually recorded

10:07:46 1 conversation.

10:07:46 2 THE COURT: That's a motion. That's not
10:07:50 3 evidence.

10:07:50 4 Do you have any evidence to put before the Court?

10:07:53 5 MS. LAKE: If I can have a moment, Your Honor?

10:07:54 6 THE COURT: Yes.

10:08:05 7 MS. LAKE: We call Shawn Querrard, Your Honor.

10:08:08 8 THE COURT: All right.

10:08:32 9 (Witness sworn)

10:08:36 10 THE WITNESS: I do.

10:08:36 11 THEREUPON, SHAWN QUERRARD, having been duly
10:08:40 12 sworn, was examined and testified as follows:

10:08:40 13 DIRECT EXAMINATION

10:08:40 14 BY MS. LAKE:

10:08:40 15 Q. Good morning.

10:08:41 16 A. Good morning.

10:08:41 17 Q. Please state your name for the record.

10:08:43 18 A. Shawn Querrard.

10:08:44 19 Q. And could you please spell your last name?

10:08:47 20 A. Querrard, Q-u-e-r-r-a-r-d.

10:08:50 21 Q. Agent Querrard, who do you work for?

10:08:54 22 A. I'm a deputized federal task force agent assigned
10:08:56 23 to the Drug Enforcement Administration, High Intensity
10:09:01 24 Drug Trafficking Task Force.

10:09:01 25 Q. And how long have you worked in that capacity?

10:09:03 1 A. I've worked in that capacity for nine years. I've
10:09:07 2 been a police officer for 17 years.

10:09:09 3 Q. And are you familiar with the investigation as it
10:09:12 4 relates to the Tapia investigation?

10:09:14 5 A. Yes, I am.

10:09:15 6 Q. And are you specifically familiar with the
10:09:18 7 investigation as it relates to Walter Hill?

10:09:21 8 A. Yes, I am.

10:09:22 9 Q. Are you familiar with the investigation as it
10:09:24 10 relates to Angelo Hill?

10:09:25 11 A. Yes, I am.

10:09:27 12 Q. And are you aware whether or not at some point in
10:09:30 13 time Angelo Hill made contact with the U.S. Attorney's
10:09:34 14 Office?

10:09:34 15 A. Yes.

10:09:35 16 Q. And during that contact with the U.S. Attorney's
10:09:38 17 Office, are you aware whether or not Angelo Hill
10:09:41 18 consented to recorded conversations with codefendants?

10:09:45 19 A. Yes, he did.

10:09:46 20 Q. And was that approximately --

10:09:53 21 THE COURT: You're asking an awful lot of
10:09:55 22 leading questions.

10:09:56 23 All the witness is saying is yes, yes, yes.

10:09:58 24 I think the witness needs to testify.

10:10:02 25 MS. LAKE: I will, Your Honor. I would just

10:10:04 1 ask the Court for some leeway to lay the foundation.

10:10:07 2 THE COURT: That's why I've given you some.
10:10:09 3 But I think it's time to have the witness testify.

10:10:12 4 MS. LAKE: Just one last foundational question.

10:10:15 5 BY MS. LAKE:

10:10:15 6 Q. Was that approximately September 2013 that Angelo
10:10:20 7 Hill gave consent to record conversations with Angelo
10:10:23 8 Hill [sic]?

10:10:23 9 A. Yes, I believe so.

10:10:24 10 Q. Please describe the circumstances that occurred
10:10:26 11 when Angelo Hill had contact with Walter Hill.

10:10:30 12 A. On that time frame, after agreeing with the Drug
10:10:35 13 Enforcement Administration to assist us in this
10:10:37 14 investigation, an audio/video recording device was
10:10:43 15 placed on Mr. Angelo Hill. And he proceeded to set up
10:10:47 16 to meet with Mr. Walter Hill on the Island of St. John
10:10:52 17 in the area of a rental, vehicle rental company that was
10:10:57 18 owned by Angelo Hill's family.

10:11:00 19 Q. And directing your attention specifically to the
10:11:02 20 date of October 20, 2013, was a conversation made -- had
10:11:08 21 between Angelo Hill and Walter Hill?

10:11:10 22 A. Yes, there was a consensual recorded conversation
10:11:15 23 that was conducted.

10:11:15 24 Q. And during the course of the conversation, briefly
10:11:18 25 and in general, what, if anything, was said by the

10:11:22 1 defendant Walter Hill?

10:11:23 2 A. Basically, the conversation between the two
10:11:29 3 individuals was regarding the May 17th seizure and
10:11:35 4 arrest of -- a seizure of seven kilograms of cocaine and
10:11:39 5 the arrest of Roberto Tapia.

10:11:42 6 MR. MINGOLLA: I would object to this, Your
10:11:43 7 Honor, as speculative.

10:11:44 8 THE COURT: Okay. Overruled.

10:11:47 9 BY MS. LAKE:

10:11:47 10 Q. And what else was the content of the conversation?

10:11:50 11 A. Basically, the conversation, Mr. Walter Hill
10:11:55 12 explained his involvement in that particular transaction
10:11:57 13 that occurred before the arrest of Mr. Roberto Tapia.

10:12:01 14 Q. And if you can provide, in general, just a bit more
10:12:05 15 detail. Specifically, what did Walter Hill say
10:12:08 16 regarding his involvement in that narcotics transaction?

10:12:11 17 A. Roberto -- Mr. Walter Hill and Angelo Hill
10:12:15 18 basically discussed Mr. Roberto Tapia's arrival to St.
10:12:20 19 John, how he was picked up by Angelo Hill, and basically
10:12:26 20 dropped off to meet with Mr. Walter Hill. During that
10:12:29 21 meet, Mr. Walter Hill provided him seven kilograms of
10:12:33 22 cocaine.

10:12:33 23 He discussed that, persons who were in the area,
10:12:39 24 where that they met. And other discussions were where
10:12:41 25 Mr. Walter Hill was concerned about him handling of the

10:12:46 1 seven kilograms of cocaine.

10:12:48 2 Q. And at the conclusion of the conversation between
10:12:51 3 Angelo Hill and Walter Hill, what did Angelo Hill do in
10:12:55 4 terms of his contact with law enforcement?

10:12:58 5 A. Basically -- could you repeat question, please?

10:13:02 6 Q. Did Angelo Hill report his conversation that --
10:13:06 7 with Walter Hill to law enforcement?

10:13:08 8 A. Yes. Immediately after the conversation he
10:13:11 9 returned to meet with myself and another agent, where
10:13:15 10 the audio/video device was removed and taken from Angelo
10:13:20 11 Hill. And then basically we did debriefing on him as to
10:13:24 12 the conversations that he had with Mr. Angelo Hill --
10:13:26 13 Mr. Walter Hill.

10:13:28 14 Q. And then did Angelo Hill consent to record a second
10:13:32 15 conversation with Walter Hill?

10:13:33 16 A. Yes, he did.

10:13:34 17 Q. And that conversation did not occur, was not
10:13:37 18 recorded, correct?

10:13:38 19 A. Correct. There were some technical issues that had
10:13:41 20 occurred within the time frame between him actually
10:13:46 21 receiving the recording device and when Mr. Angelo --
10:13:49 22 Mr. Walter Hill was able to arrive. It was too long a
10:13:53 23 period, and the battery basically had went dead.

10:13:55 24 Q. And before that, obviously, you testified that
10:13:57 25 Angelo Hill gave consent for that recording; is that

10:14:01 1 correct?

10:14:01 2 A. That is correct.

10:14:03 3 MS. LAKE: I have no further questions, Your
10:14:05 4 Honor.

10:14:05 5 THE COURT: All right.

10:14:06 6 Agent Querrard, did you observe or surveil any of
10:14:12 7 the individuals who took part in the conversation?

10:14:18 8 THE WITNESS: I, myself, was not part of the
10:14:20 9 surveillance team, but we did have a surveillance team.
10:14:24 10 We did have other agents who observed Mr. Walter Hill
10:14:27 11 arrive at the location and meet with Angelo Hill that
10:14:29 12 day.

10:14:30 13 THE COURT: Is there anyone who observed
10:14:31 14 whether Mr. Walter Hill was, and Mr. Angelo Hill were
10:14:35 15 alone, or whether there were others present?

10:14:37 16 THE WITNESS: They were alone.

10:14:39 17 THE COURT: My question is, were there any
10:14:41 18 people who observed, so that they could testify based on
10:14:44 19 firsthand knowledge, based on their observation, that
10:14:48 20 it -- whether Mr. Walter Hill and Angelo Hill were alone
10:14:52 21 in their conversation?

10:14:53 22 THE WITNESS: He --

10:14:55 23 THE COURT: My question is a yes or no
10:14:57 24 question.

10:15:00 25 THE WITNESS: Yes.

10:15:02 1 THE COURT: Okay. Who would that be?

10:15:04 2 THE WITNESS: The agents who were there. I
10:15:07 3 believe Mr. Mike Grossman, possibly. There were several
10:15:09 4 agents who were there. I can't say specifically who all
10:15:12 5 were present.

10:15:13 6 THE COURT: I don't need to know who all. It's
10:15:18 7 just, was anyone there to observe to express any --
10:15:22 8 their observations as to the demeanor and the
10:15:25 9 circumstances of the conversation?

10:15:27 10 THE WITNESS: I personally reviewed audio and
10:15:32 11 video recordings, so I can testify to what I observed.

10:15:36 12 THE COURT: All right. So there was a video
10:15:38 13 recording?

10:15:38 14 THE WITNESS: Correct.

10:15:39 15 THE COURT: All right.

10:15:40 16 MS. LAKE: If I can clarify, Your Honor.

10:15:43 17 BY MS. LAKE:

10:15:44 18 Q. Agent Querrard, what type of recording device was
10:15:46 19 placed on Angelo Hill? Was it simply audio? Was it
10:15:50 20 audio and video?

10:15:51 21 A. It was an audio and video recording device.

10:15:54 22 Q. And --

10:15:56 23 THE COURT: Let me remind the parties. The
10:15:58 24 question here would -- seems whether this is a
10:16:01 25 consensual recording or not, and that seems to implicate

10:16:05 1 several things: Is it consensual? What's the demeanor?
10:16:08 2 Who was there? Was there a gun to someone's head?

10:16:11 3 I haven't heard anything like that.

10:16:12 4 I don't know if this witness is going to do it or
10:16:14 5 some other witness is going to talk about the
10:16:16 6 circumstances.

10:16:17 7 But it seems to me if we want to zero in on the
10:16:19 8 circumstances, whether the Court can assess indeed
10:16:21 9 whether things were consensual, that's where we need to
10:16:24 10 go.

10:16:25 11 So if this witness has the information, fine. If
10:16:27 12 someone else does, then we'll get to that in due course,
10:16:31 13 I suspect.

10:16:32 14 BY MS. LAKE:

10:16:33 15 Q. Based on your review of -- strike that.

10:16:35 16 Were you present for the -- were you able to
10:16:38 17 observe the conversation between Walter Hill and Angelo
10:16:41 18 Hill?

10:16:41 19 A. Yes.

10:16:42 20 Q. And based on your observation of the conversation
10:16:44 21 between them, did -- was there anything that would lead
10:16:48 22 you to believe that --

10:16:49 23 THE COURT: No, ask him what he saw. Don't --
10:16:53 24 stop leading the witness.

10:16:53 25 MS. LAKE: I will, Your Honor.

10:16:54 1 BY MS. LAKE:

10:16:54 2 Q. What did you see?

10:16:56 3 A. It was a clearly consensual meeting, in speaking
10:17:00 4 with Angelo Hill --

10:17:02 5 THE COURT: Mr. Querrard --

10:17:04 6 MR. MINGOLLA: Objection, Your Honor. I would,
10:17:06 7 again, calls for speculative.

10:17:08 8 THE COURT: All right.

10:17:08 9 THE WITNESS: And what I observed --

10:17:09 10 THE COURT: Just tell us what you observed.
10:17:11 11 Don't use any conclusory terms. I'll decide if it's
10:17:16 12 consensual. Just tell me what you saw.

10:17:18 13 THE WITNESS: Angelo Hill proceeded to the
10:17:21 14 vehicle rental business on St. John.

10:17:22 15 Mr. Walter Hill arrived there on his own accord.
10:17:26 16 They -- Mr. Walter Hill met with Angelo Hill at the
10:17:30 17 rental business. Mr. Walter -- Angelo Hill exited the
10:17:35 18 rental business. Walked over to a vehicle, where Walter
10:17:38 19 Hill also walked over to a vehicle.

10:17:41 20 They greeted. They began conversation about their
10:17:44 21 family and then the conversation continued.

10:17:47 22 It was clearly consensual.

10:17:48 23 It was in an open parking area. It was over the
10:17:52 24 hood of a vehicle, and they basically sat and spoke
10:17:55 25 with -- there was no one around, no additional persons

10:17:59 1 around.

10:17:59 2 Mr. Angelo Hill and Walter Hill, at the time, there
10:18:03 3 was no, it was consensual from all that I observed.

10:18:06 4 BY MS. LAKE:

10:18:06 5 Q. And at the conclusion of the conversation, did
10:18:09 6 Walter Hill leave?

10:18:11 7 A. Yes. Walter left on his own accord, also.

10:18:15 8 Q. And Walter -- did Angelo Hill leave?

10:18:17 9 A. Yes. Angelo Hill also had left shortly afterwards.

10:18:21 10 Q. So at no point in time was anyone not free to
10:18:25 11 leave; is that correct?

10:18:25 12 A. That's correct.

10:18:26 13 Q. And during -- based on your observation, did you
10:18:28 14 see anything that would lead you to believe that there
10:18:33 15 was tension between the two, based on your observation?

10:18:35 16 MR. MINGOLLA: Objection.

10:18:35 17 THE WITNESS: Absolutely not.

10:18:36 18 THE COURT: Sustained.

10:18:37 19 MR. MINGOLLA: Leading.

10:18:38 20 THE COURT: Again, let the witness testify.

10:18:39 21 You're just having him say yes, and I would like to
10:18:42 22 hear what the witness has to say as opposed to just
10:18:45 23 affirming what you're saying.

10:18:48 24 BY MS. LAKE:

10:18:48 25 Q. Based on your observations, did you notice anything

10:18:51 1 else?

10:18:52 2 A. Like I said, Walter Hill arrived at the location
10:19:00 3 and met with Angelo Hill by himself, free. He arrived
10:19:05 4 on his own. They met, they walked outside. They spoke
10:19:09 5 freely. They laughed. They spoke about family
10:19:11 6 conversations, and to include what occurred on May 17th.

10:19:15 7 There was at no time any sign of any confrontation
10:19:23 8 or anything of that nature. They spoke about meeting
10:19:28 9 again. Walter Hill stated that he would do certain
10:19:31 10 things and then get back to Angelo. There were no signs
10:19:35 11 of confrontation. Everything appeared to be just normal
10:19:38 12 friends talking.

10:19:39 13 Q. And the entire conversation was audio and video
10:19:43 14 recordings; is that correct?

10:19:45 15 A. That is correct.

10:19:46 16 Q. So everything you're testifying to is documented,
10:19:49 17 correct?

10:19:50 18 A. That is correct.

10:19:52 19 Q. Thank you.

10:19:52 20 MS. LAKE: I have nothing further.

10:19:54 21 THE COURT: Attorney Mingolla?

10:19:55 22 MR. MINGOLLA: Yes, sir.

10:20:03 23 THE COURT: Was the government going to
10:20:05 24 introduce this video?

10:20:08 25 MS. LAKE: If I may have a moment, Your Honor.

10:20:13 1 THE COURT: If you would yield the lectern for
10:20:15 2 a moment, Attorney Mingolla.

10:20:17 3 Go ahead.

10:20:18 4 MS. LAKE: Based on the government's -- the
10:20:20 5 issue of consent is a Starks foundational issue, and
10:20:23 6 based on an earlier hearing the Court said the Court
10:20:26 7 would rather deal with Starks during the course of the
10:20:29 8 jury trial.

10:20:30 9 So based on that investigation, we don't have the
10:20:33 10 video because it's a Starks foundational element.

10:20:36 11 We can easily get that video and present it and
10:20:39 12 play it for the Court. But consent in terms of
10:20:42 13 admissibility of the videotape is a Starks foundational
10:20:44 14 element.

10:20:44 15 We're more than prepared to proceed in that regard,
10:20:46 16 if I can just have five minutes to get the videotape.
10:20:50 17 But it is a Starks foundational issue.

10:20:51 18 THE COURT: All right. Well, arguably it goes
10:20:54 19 beyond that if it's a consent issue. But we'll cover
10:20:57 20 that later.

10:20:57 21 If you have that, I think that would be useful.
10:20:59 22 Attorney Mingolla, go ahead.

10:21:03 23 MR. MINGOLLA: Thank you, Judge.

10:21:03 24

10:21:09 25

10:21:09 1 CROSS-EXAMINATION

10:21:10 2 BY MR. MINGOLLA:

10:21:10 3 Q. Good morning, Agent Querrard.

10:21:12 4 A. Good morning.

10:21:12 5 Q. Agent Querrard, you've left me a little perplexed
10:21:18 6 about a few things that I would get some clarification
10:21:21 7 on. Given that you are under oath and telling the truth
10:21:29 8 and that you were present that day, approximately how
10:21:34 9 far away were you from this alleged conversation? I
10:21:37 10 mean the two Misters Hill -- Messrs. Hill?

10:21:42 11 A. I met with Angelo Hill before --

10:21:43 12 Q. I didn't ask that question. I asked how far away
10:21:47 13 were you during the course of this alleged conversation?

10:21:49 14 A. I did not physically observe it as it occurred.

10:21:52 15 Q. Thank you.

10:21:52 16 A. I reviewed the video.

10:21:53 17 Q. Very well.

10:21:54 18 You also mentioned something to the effect -- not
10:21:57 19 something, that's colloquial.

10:21:59 20 You also mentioned definitely twice, and Attorney
10:22:04 21 Lake further mentioned that this recorder, is the word
10:22:09 22 that was used, was put on Angelo's body. Do you recall
10:22:14 23 testifying to that a few minutes ago?

10:22:18 24 A. There was --

10:22:20 25 Q. You said it twice?

10:22:21 1 A. Yeah.

10:22:21 2 Q. You said it twice.

10:22:23 3 Do you recall Attorney Lake saying it?

10:22:27 4 A. That it was placed on his body? I don't know if
10:22:29 5 that was specifically said.

10:22:31 6 Q. All right. Now, why don't you be specific and tell
10:22:35 7 me precisely where on Mr. Hill, that's Angelo Hill,
10:22:40 8 where on Mr. Hill's body was the recorder?

10:22:45 9 Was it not placed in a cup or a can or some kind --
10:22:51 10 a soda can or cup?

10:22:53 11 I've just never been clarified by the government.

10:22:57 12 MS. LAKE: Objection. Relevance. It exceeds
10:22:59 13 the issue of consent.

10:23:01 14 MR. MINGOLLA: It goes to the issue --

10:23:02 15 THE COURT: Stop, stop. I'm going to allow you
10:23:04 16 a little leeway, but let's try to keep this focused.

10:23:06 17 Go ahead. Overruled.

10:23:08 18 THE WITNESS: I don't believe I recall
10:23:09 19 specifically that it was placed on Angelo Hill's body.

10:23:12 20 BY MR. MINGOLLA:

10:23:12 21 Q. No, it wasn't. Okay. So it was placed where?

10:23:20 22 Where was the audio/video device placed?

10:23:24 23 A. It was given -- it was given to Angelo Hill to be
10:23:29 24 utilized. I'm not sure if I need to be specific as to
10:23:32 25 the tools and the manners in which we do investigation.

10:23:34 1 Q. I think you do. I think you do. Where was it
10:23:37 2 placed?

10:23:44 3 It shouldn't be that hard for you to remember. You
10:23:47 4 said you're an agent for --

10:23:49 5 THE COURT: All right. Stop.

10:23:50 6 MS. LAKE: Objection, Your Honor.

10:23:51 7 THE COURT: Sustained. Let the witness answer
10:23:53 8 the question.

10:23:54 9 THE WITNESS: There were two items that was
10:23:57 10 used. One was placed in, on his arm and the other one
10:24:01 11 was placed in a cup.

10:24:04 12 BY MR. MINGOLLA:

10:24:04 13 Q. I see. And now you earlier, you stated that there
10:24:08 14 were two recordings made. Because if I understand --
10:24:14 15 strike that. If I heard you correctly, one of them ran
10:24:17 16 out of batteries or something, so you had to use another
10:24:24 17 one; is that correct?

10:24:24 18 A. That's two different dates.

10:24:28 19 Q. Is what?

10:24:29 20 A. Two different dates.

10:24:30 21 Q. So on the date they were discussing at the Hill
10:24:33 22 parking lot, it's a -- it's the second recording, I
10:24:38 23 would suppose, correct? Since the first one ran out of
10:24:45 24 batteries?

10:24:45 25 A. I'm confused with your question.

10:24:47 1 MS. LAKE: Objection. Misstates the evidence,
10:24:49 2 Your Honor.

10:24:49 3 THE COURT: All right. Let the witness -- I
10:24:50 4 mean, if he's able to answer it or if he needs
10:24:53 5 clarification, the witness can say that.

10:24:55 6 THE WITNESS: Please, could you repeat the
10:24:56 7 question, please?

10:24:59 8 BY MR. MINGOLLA:

10:24:59 9 Q. On the day that -- you say this took place on two
10:25:02 10 different days, which I'm unaware. But be that as it
10:25:07 11 may, I assume, correct me if I'm wrong, that the
10:25:12 12 conversation that was recorded was recorded in a second,
10:25:19 13 in the second conversation, because the first time the
10:25:22 14 batteries ran out?

10:25:25 15 A. No. To clarify, on the date in which you're
10:25:27 16 speaking of and the particular piece of evidence that
10:25:30 17 you're speaking of, it was recorded in its entirety.

10:25:33 18 There was a second meeting between Mr. Walter Hill
10:25:35 19 and Angelo Hill that was not recorded because of the
10:25:39 20 fact that the recording equipment, the battery had died
10:25:43 21 before they had an opportunity to meet.

10:25:53 22 Q. And how would you know that?

10:25:54 23 A. I -- because I'm part of the investigation, and I'm
10:25:58 24 aware of that.

10:25:59 25 Q. To be more specific, how was anyone aware of that,

10:26:05 1 government agent aware of that?

10:26:06 2 A. Task Force Officer Mark Joseph was the one handling
10:26:10 3 the equipment, and he advised me --

10:26:11 4 THE COURT: Are you asking the witness how are
10:26:13 5 they aware if the battery is dead?

10:26:16 6 MR. MINGOLLA: No, most certainly not.

10:26:19 7 THE COURT: What's the "that"?

10:26:20 8 MR. MINGOLLA: I -- Agent Querrard is saying
10:26:22 9 there were two conversations. That one conversation --
10:26:26 10 if I understand --

10:26:26 11 THE COURT: I just want to know what the "that"
10:26:28 12 is that you're referring to.

10:26:29 13 MR. MINGOLLA: The "that" is, there's a second
10:26:31 14 conversation that was not recorded, that he alleges.
10:26:36 15 And I'm wanting to know who saw that conversation and
10:26:41 16 or, well, apparently it was -- he pointed out -- I keep
10:26:45 17 saying "he." Forgive me.

10:26:47 18 Agent Querrard pointed out there was no recording
10:26:50 19 or no recording of that conversation. So I'm curious as
10:26:55 20 to how they were aware -- the government is aware there
10:26:59 21 was even a conversation in the first place. Who was
10:27:01 22 present at this conversation, if they can say a
10:27:05 23 conversation took place.

10:27:06 24 THE COURT: All right. Go ahead. Answer the
10:27:08 25 question.

10:27:09 1 THE WITNESS: The second conversation was,
10:27:12 2 again, under the direction of DEA with Mr. Angelo Hill
10:27:16 3 to meet with Walter Hill. This is a separate date.
10:27:19 4 This is after the date that we're discussing.

10:27:22 5 MR. MINGOLLA: This is nonresponsive.

10:27:22 6 BY MR. MINGOLLA:

10:27:25 7 Q. I asked you who can vouch for that meeting taking
10:27:28 8 place? Who saw it or heard it?

10:27:31 9 A. Task Force Officer Mark Joseph.

10:27:36 10 Q. I see. And is -- I won't ask that.

10:27:39 11 Now, did you go to either --

10:27:57 12 MR. MINGOLLA: Forgive me if I don't know your
10:27:59 13 official function. Is it acting --

10:28:06 14 MS. LAKE: Just ask the question.

10:28:08 15 THE COURT: Attorney Mingolla, you're
10:28:10 16 addressing the witness. Please.

10:28:11 17 MR. MINGOLLA: I want to know the direct title
10:28:14 18 for Mr. Lindquist.

10:28:16 19 THE COURT: All right.

10:28:16 20 BY MR. MINGOLLA:

10:28:16 21 Q. Did you go to Mr. Lindquist or did you go to Judge
10:28:19 22 Gomez to seek permission to put a tap, a bug on, a
10:28:31 23 bugging device on a cup or any kind of a can or
10:28:34 24 something?

10:28:34 25 A. Yes. This Court was made aware of that

10:28:37 1 Mr. Angelo Hill would be working with the DEA.

10:28:41 2 Q. I didn't ask that question.

10:28:42 3 I asked the question: Did you apprise the judge,
10:28:46 4 or did you apprise your boss -- I say your boss, I
10:28:50 5 assume he's your boss, Mr. Lindquist or Ms. Lake,
10:28:55 6 anyone, but probably one of those two, did you ask for a
10:29:00 7 warrant or permission of any kind to conduct that
10:29:04 8 bugging?

10:29:05 9 A. Yes.

10:29:06 10 Q. I see. And can you provide the affidavit that's
10:29:11 11 required by law to accompany said request?

10:29:15 12 THE COURT: All right. Let's make sure that
10:29:16 13 we're clear.

10:29:17 14 Are you talking about -- are you inquiring about a
10:29:23 15 conversation that was recorded using a device placed on
10:29:30 16 Mr. Angelo Hill?

10:29:33 17 MR. MINGOLLA: I'm talking about a bug --

10:29:34 18 THE COURT: My question is a yes or no.

10:29:35 19 Are you talking about that?

10:29:37 20 MR. MINGOLLA: It wasn't on him. It was -- it
10:29:39 21 may have been one on him. It was a bug. We were only
10:29:43 22 made aware there was a bug in the cup.

10:29:44 23 THE COURT: My question is a yes or no one.

10:29:47 24 Are you talking about a recording made from a
10:29:49 25 device that was placed on Angelo Hill while in

10:29:51 1 conversation with Walter Hill?

10:29:53 2 Yes or no.

10:29:57 3 MR. MINGOLLA: Sir, I cannot answer that. It
10:29:59 4 was not placed upon Mr. Hill. It was placed on an
10:30:02 5 object which was not on Mr. Hill. It was in a cup. And
10:30:05 6 the cup was not always in his possession.

10:30:08 7 THE COURT: Right. So are you talking about a
10:30:10 8 recording that was not made using the phone lines?

10:30:18 9 MR. MINGOLLA: Yes, I am.

10:30:21 10 THE COURT: Let's move along, then. Next
10:30:23 11 question.

10:30:25 12 MR. MINGOLLA: Very well.

10:30:25 13 BY MR. MINGOLLA:

10:30:29 14 Q. Now let me ask this again. And I'm trying -- I'm
10:30:31 15 sorry I'm having -- I'm redundant. I don't recall if I
10:30:35 16 got an answer.

10:30:36 17 Did you supply an affidavit to an authority figure,
10:30:42 18 i.e., a judge or your bosses, to get authorization to
10:30:47 19 plant a bug?

10:30:48 20 MS. LAKE: Objection. Relevance. Asked and
10:30:51 21 answered.

10:30:51 22 THE COURT: All right. Sustained.

10:30:56 23 BY MR. MINGOLLA:

10:30:57 24 Q. Did you provide an affidavit on anything?

10:30:59 25 MS. LAKE: Objection. Relevance, Your Honor.

10:31:01 1 THE COURT: You need to narrow your question.
10:31:04 2 Affidavit for what?

10:31:09 3 MR. MINGOLLA: I thought I had.

10:31:09 4 BY MR. MINGOLLA:

10:31:09 5 Q. Did you provide an affidavit that's required by law
10:31:15 6 to support any request for a recording device?

10:31:19 7 MS. LAKE: Objection. Misstates the law and
10:31:21 8 relevance. Beyond --

10:31:22 9 THE COURT: All right. Rephrase your question.
10:31:24 10 Are you talking about wire, that is something like
10:31:28 11 phone line intercepts?

10:31:29 12 MR. MINGOLLA: No, sir.

10:31:30 13 THE COURT: Or are you -- all right. Then move
10:31:34 14 on. Next question.

10:31:36 15 MR. MINGOLLA: I use the word, definition, I
10:31:37 16 use the old-fashioned term "bug," which doesn't involve,
10:31:41 17 usually, telecommunication. It is a recording device
10:31:43 18 placed upon a button or a wall hanging or anything else
10:31:47 19 you can hide a place -- hide a thing, and it the records
10:31:50 20 a conversation allegedly. However, in this case, it was
10:31:56 21 placed in a -- we believe, and I've been told -- it was
10:32:00 22 placed in a cup.

10:32:01 23 THE COURT: All right. Agent Querrard, whose
10:32:04 24 cup was it?

10:32:06 25 THE WITNESS: This cup was property of the FBI.

10:32:09 1 THE COURT: All right. Next question.

10:32:18 2 BY MR. MINGOLLA:

10:32:18 3 Q. Were you involved -- simple question. Were you
10:32:23 4 involved in any way in the minimization -- alleged
10:32:26 5 minimization of the over, astonishingly, 18,000
10:32:33 6 telephone calls?

10:32:36 7 MS. LAKE: Objection, Your Honor. Relevance.

10:32:38 8 THE COURT: Attorney Mingolla, I tried to get a
10:32:42 9 sense of the subject of your suppression, and I thought
10:32:51 10 it was an October 2013 conversation. Is that what it is
10:32:57 11 you seek to suppress?

10:32:59 12 MR. MINGOLLA: Yes, sir.

10:33:00 13 THE COURT: All right. And the conversation
10:33:03 14 that you're talking about is not one that involves the
10:33:05 15 phone lines, correct?

10:33:08 16 MR. MINGOLLA: Yes. Correct.

10:33:09 17 THE COURT: Okay. All right. So you were just
10:33:15 18 posing a question about minimization, which would be for
10:33:20 19 phone line, wire intercepts.

10:33:22 20 MR. MINGOLLA: Let me refine. You're -- you're
10:33:25 21 absolutely correct, Your Honor, obviously.

10:33:27 22 Let me, let me refine the question.

10:33:29 23 BY MR. MINGOLLA:

10:33:30 24 Q. Were you involved with the minimization of said --
10:33:33 25 alleged conversation between Messrs. Hill at the car

10:33:38 1 lot?

10:33:38 2 MS. LAKE: Objection, Your Honor. Relevance.

10:33:41 3 THE COURT: All right. Sustained.

10:33:48 4 MR. MINGOLLA: I would object to that. I think
10:33:50 5 minimization is a very important element of this. But
10:33:52 6 obviously I defer to your judgment.

10:34:02 7 BY MR. MINGOLLA:

10:34:02 8 Q. Do you know -- and if you don't, that's fine. Do
10:34:06 9 you know how the copies were made of these, of the
10:34:16 10 disks, specifically? I'm not discussing all the disks.
10:34:21 11 I'm discussing the last three disks, which are the only
10:34:29 12 disks of more or less 50 that involve my client.

10:34:31 13 Were you involved at all in the reproduction, shall
10:34:34 14 we say, of those?

10:34:37 15 A. No, I was not.

10:34:38 16 Q. Who was?

10:34:42 17 A. I believe that would have been --

10:34:48 18 MS. LAKE: Objection, Your Honor. Relevance.

10:34:49 19 THE COURT: Sustained.

10:34:50 20 MR. MINGOLLA: Your Honor, the copies that we
10:34:53 21 received, with all due respect, were incoherent. They--

10:34:57 22 THE COURT: Attorney Mingolla, I can appreciate
10:35:00 23 your position. This is a suppression hearing.

10:35:06 24 If there are other matters you need to raise with
10:35:08 25 the Court, we'll deal with that at the appropriate time.

10:35:11 1 MR. MINGOLLA: Just a --

10:35:12 2 THE COURT: Your position is noted. I know you
10:35:14 3 want to ask the question. I sustained the objection.
10:35:16 4 So let's move on.

10:35:17 5 MR. MINGOLLA: Very well.

10:35:26 6 BY MR. MINGOLLA:

10:35:26 7 Q. I asked, I asked you, Agent Querrard, about an
10:35:33 8 alleged -- do you know whether Agent Joseph requested --
10:35:39 9 strike that -- drafted an affidavit -- provided an
10:35:43 10 affidavit requesting permission?

10:35:44 11 MS. LAKE: Objection. Relevance, Your Honor.

10:35:46 12 THE COURT: All right. Sustained.

10:35:56 13 BY MR. MINGOLLA:

10:35:57 14 Q. Now, you were -- no, let me rephrase.

10:36:07 15 How long on that given day that this recording in
10:36:15 16 Delbert's parking lot, how long have you been involved,
10:36:19 17 time frame, how many hours had you been involved that
10:36:23 18 day in that scenario, shall we call it?

10:36:25 19 MS. LAKE: Objection. Relevance.

10:36:27 20 THE COURT: I'm going to give you a little
10:36:29 21 leeway. Overruled.

10:36:32 22 THE WITNESS: We traveled from St. Thomas to
10:36:36 23 St. John, 45 minutes. And then meeting with Angelo Hill
10:36:41 24 prior to, in 15 minutes the entire conversation, and
10:36:50 25 then meeting with him afterwards. I would probably say

10:36:53 1 approximately four hours.

10:37:01 2 BY MR. MINGOLLA:

10:37:01 3 Q. And was this recording device, this bug, was it
10:37:07 4 within your purview, if you will, was it within your
10:37:15 5 view throughout the time it was being utilized?

10:37:20 6 A. It was in my view prior to Angelo Hill leaving our
10:37:26 7 presence to actually go meet with Walter. And then upon
10:37:29 8 him meeting with Walter, he again met with us.

10:37:33 9 But during the period of -- him leaving us and
10:37:36 10 getting back to us, no, it was not in my view. But
10:37:40 11 during that period it was recorded.

10:37:43 12 MR. MINGOLLA: Judge, I would appreciate your
10:37:45 13 asking this witness to refer to my client as Mr. Hill,
10:37:49 14 not Walter. He's not on a first name basis with my
10:37:52 15 client.

10:37:52 16 THE COURT: All right.

10:37:53 17 MR. MINGOLLA: My client deserves respect.

10:37:56 18 THE WITNESS: Your Honor, may I comment?

10:37:57 19 THE COURT: No. Wait for the next question.

10:38:06 20 BY MR. MINGOLLA:

10:38:07 21 Q. You're aware that both of those men are related and
10:38:10 22 they have been extremely close friends all their lives
10:38:12 23 since childhood, are you not?

10:38:14 24 A. This is what I was advised.

10:38:17 25 Q. By whom?

10:38:19 1 A. Mr. Angelo Hill.

10:38:31 2 Q. And you're going back to your involvement -- my
10:38:34 3 question previous, you say that you were involved for, I
10:38:36 4 believe, approximately four hours. Are you aware during
10:38:47 5 the course of one hour, Mr. Angelo Hill called my client
10:38:52 6 12 times in one hour, to ascertain that he was going to
10:38:58 7 come to Delbert Hill's parking lot that morning?

10:39:03 8 A. I can't say specifically he was called, but I was
10:39:05 9 aware that he had contacted him, yes, or attempted to
10:39:09 10 contact him, yes.

10:39:10 11 Q. Twelve times --

10:39:11 12 A. I can't --

10:39:13 13 Q. -- in an hour?

10:39:14 14 A. -- say specifically the amount.

10:39:25 15 MR. MINGOLLA: Bear with me just a moment, Your
10:39:28 16 Honor, if you would, please?

10:39:29 17 THE COURT: Yes.

10:39:31 18 BY MR. MINGOLLA:

10:39:31 19 Q. Now --

10:39:32 20 THE COURT: Attorney Mingolla let's try this.
10:39:38 21 It might expedite things. I don't know if the
10:39:41 22 government is prepared now to cover the videotape of
10:39:44 23 that conversation, and then I'll give you a chance to
10:39:47 24 examine on that, so we won't have to go up and down and
10:39:50 25 up and down.

10:39:51 1 If you could yield the lectern for the moment to
10:39:55 2 Attorney Lake, so she can probably put that in so we can
10:39:58 3 go from there, it might expedite and focus the inquiry.

10:40:02 4 MR. MINGOLLA: Obviously I will acquiesce to
10:40:05 5 your wishes.

10:40:05 6 I would only ask one thing. Because again, forgive
10:40:09 7 me, but I'm a late starter in all of this.

10:40:09 8 BY MR. MINGOLLA:

10:40:14 9 Q. Was authentication heard on this matter?

10:40:19 10 THE COURT: You're asking the witness?

10:40:22 11 MR. MINGOLLA: Yes.

10:40:23 12 MS. LAKE: Objection. Relevance, Your Honor.

10:40:25 13 THE COURT: Okay. Sustained.

10:40:27 14 Attorney Mingolla, you're going to have another
10:40:29 15 chance to ask questions.

10:40:31 16 If we can get to the subject video. Attorney --

10:40:41 17 MR. MINGOLLA: Thank you, Judge.

10:40:42 18 THE COURT: Yes.

10:40:53 19 MS. LAKE: If I can just have a moment, Your
10:40:56 20 Honor?

10:40:57 21 THE COURT: Yes.

10:40:57 22 MS. LAKE: And while we're setting this up, if
10:41:00 23 I can ask one clarifying question of the witness.

10:41:04 24 THE COURT: Go right ahead.

10:41:05 25

10:41:05 1 FURTHER DIRECT EXAMINATION

10:41:05 2 BY MS. LAKE:

10:41:06 3 Q. Agent Querrard, were there multiple recording
10:41:09 4 devices that were given to Angelo Hill?

10:41:11 5 A. There were two, correct.

10:41:13 6 Q. And what were those two?

10:41:17 7 A. One was on --

10:41:21 8 THE COURT: Haven't we been over this? He said
10:41:23 9 one was on his person and one was in a cup.

10:41:27 10 MS. LAKE: I wanted to make sure that was clear
10:41:32 11 to Your Honor. Because defense counsel --

10:41:50 12 THE COURT: You made the inquiry of the
10:42:00 13 witness, so...

10:42:03 14 MS. LAKE: Thank you.

10:42:11 15 MR. MINGOLLA: Your Honor, my eyes being what
10:42:12 16 they are, do you mind if I sat up here?

10:42:16 17 THE COURT: You can sit there. Your screen can
10:42:18 18 be on, though. If it isn't, we'll make sure it is put
10:42:22 19 on.

10:42:22 20 MR. MINGOLLA: I beg your pardon?

10:42:24 21 THE COURT: Your screen should be on. If it
10:42:27 22 isn't, we'll put it on.

10:42:29 23 MR. MINGOLLA: Oh, I'm sorry.

10:43:10 24 BY MS. LAKE:

10:43:10 25 Q. Agent Querrard, showing you what's been marked as

10:43:12 1 Government's Exhibit Number 1 for purposes of this
10:43:15 2 suppression hearing.

10:43:17 3 Do you see this in front of you?

10:43:19 4 A. Yes.

10:43:23 5 Q. And can you please explain to me what you're
10:43:26 6 looking at right now?

10:43:27 7 THE COURT: First tell us what it is. What is
10:43:27 8 Exhibit Number 1?

10:43:30 9 THE WITNESS: This is the audio/video recording
10:43:37 10 that was utilized to record the meeting between Angelo
10:43:41 11 Hill and Walter Hill.

10:43:46 12 This is on the Island of St. John. It was being
10:43:49 13 activated by Task Force Officer Mark Joseph, and given
10:44:01 14 to Mr. Hill, Mr. Angelo Hill.

10:44:03 15 BY MS. LAKE:

10:44:03 16 Q. In the very beginning of the videotape there was a
10:44:06 17 man's face in view. Did you see that?

10:44:10 18 A. Yes. That is Task Force Officer Mark Joseph.

10:44:31 19 I believe this is after Mr. Angelo Hill met with
10:44:33 20 us, and I believe he is now entering the vehicle that he
10:44:36 21 was operating to proceed to the car rental company in
10:44:42 22 Cruz Bay area, St. John.

10:44:43 23 Q. And when you say "he," you're referring to Angelo
10:44:46 24 Hill, correct?

10:44:46 25 A. Correct.

10:44:57 1 Q. At this point in time, Angelo Hill is meeting with
10:45:02 2 Task Force Officer Mark Joseph, correct?

10:45:02 3 A. And myself, correct.

10:45:04 4 Q. And Shawn -- you, okay.

10:45:40 5 MR. MINGOLLA: Your Honor, may I ask a
10:45:42 6 question?

10:45:42 7 There's a device that you can't see right now, but
10:45:44 8 it's down there. Is that -- what is that? A mike?
10:45:49 9 What is that?

10:45:50 10 THE COURT: Attorney Mingolla, why don't you
10:45:52 11 wait for your opportunity to ask questions. Let the
10:45:55 12 government complete its exam.

10:56:36 13 (Pause)

10:56:37 14 THE COURT: Is there a time marked to get to
10:56:39 15 the point where there's the parking lot discussion?

10:56:42 16 Can we get to that?

10:56:43 17 MS. LAKE: Sure. I wasn't sure if the Court
10:56:45 18 wanted to see the full video, to make sure there is no
10:56:48 19 undue --

10:56:48 20 THE COURT: It is the conversation that's being
10:56:50 21 sought to be suppressed, not all of this stuff. So
10:56:52 22 let's get to the conversation.

10:58:48 23 MS. LAKE: Could you pause it for a second?

10:58:49 24 BY MS. LAKE:

10:58:50 25 Q. Agent Querrard, who is speaking right now?

10:58:53 1 A. This is a conversation between Mr. Angelo Hill and
10:58:56 2 Mr. Walter Hill.

11:01:27 3 MS. LAKE: Can you stop it there?

11:01:29 4 BY MS. LAKE:

11:01:29 5 Q. The person who is talking at this point the most in
11:01:35 6 the video, who is that person talking?

11:01:37 7 A. Mr. Walter Hill.

11:01:39 8 MS. LAKE: Can you keep playing it?

11:01:39 9 (Recording played)

11:02:50 10 MS. LAKE: Can you stop it here?

11:02:51 11 BY MS. LAKE:

11:02:53 12 Q. Who is saying, "No, let me tell you how it went"?

11:02:57 13 A. Mr. Walter Hill.

11:02:59 14 MR. MINGOLLA: Leading question.

11:03:00 15 THE COURT: Overruled.

11:03:01 16 BY MS. LAKE:

11:03:01 17 Q. I didn't hear your answer. I'm sorry?

11:03:03 18 A. Mr. Walter Hill.

11:03:04 19 MS. LAKE: Can you keep playing it?

11:03:04 20 (Recording played)

11:08:22 21 MS. LAKE: Can you stop it there?

11:08:23 22 BY MS. LAKE:

11:08:23 23 Q. Who are we seeing in the video right now?

11:08:25 24 A. Mr. Walter Hill.

11:08:27 25 Q. And do you see him in the courtroom today?

11:08:29 1 A. Yes, I do.

11:08:30 2 Q. Could you please point to where he's located and
11:08:33 3 describe something he's wearing?

11:08:34 4 A. He is sitting over to defense counsel by Attorney
11:08:39 5 Mingolla. He is wearing a white long-sleeve shirt and
11:08:42 6 glasses. Bald head.

11:08:44 7 MS. LAKE: Thank you.

11:08:45 8 Your Honor, I ask that the record reflect the
11:08:47 9 witness has identified the defendant Walter Hill.

11:08:49 10 THE COURT: Yes, the record will reflect the
11:08:52 11 witness has identified the defendant Walter Hill.

11:08:55 12 MS. LAKE: Thank you.

11:08:56 13 Can you keep playing?

11:08:56 14 (Recording played)

11:14:49 15 MS. LAKE: Your Honor, there's -- if we have a
11:14:50 16 moment -- could have a moment. There's a second CD for
11:14:53 17 this video.

11:14:54 18 THE COURT: Yes.

11:15:06 19 MS. LAKE: Could you stop it?

11:15:07 20 BY MS. LAKE:

11:15:07 21 Q. What are you watching now, Agent Querrard?

11:15:10 22 A. This is the continuation.

11:15:12 23 MS. LAKE: And I ask to mark this as
11:15:15 24 Exhibit 1a, Your Honor. It's a separate CD with the
11:15:19 25 same video.

11:15:20 1 THE COURT: Yes.

11:15:22 2 MS. LAKE: Can you keep playing it?

11:15:22 3 (Recording played)

11:15:38 4 MS. LAKE: Could you stop it?

11:15:38 5 BY MS. LAKE:

11:15:39 6 Q. Again, who are you looking at now on the video?

11:15:41 7 A. This is Mr. Walter Hill.

11:15:43 8 Q. Thank you.

11:15:44 9 MS. LAKE: Can you keep playing it?

11:33:30 10 (Recording played)

11:33:32 11 MS. LAKE: If we can have a moment, Your Honor.

11:33:34 12 THE COURT: How much longer is this?

11:33:36 13 MS. LAKE: If I can inquire?

11:33:43 14 THE COURT: Yes.

11:33:44 15 MS. LAKE: Six and a half minutes, Your Honor.

11:33:46 16 THE COURT: All right.

11:33:49 17 BY MS. LAKE:

11:33:49 18 Q. And right before we took a break in the video, who

11:33:52 19 was the last person that was speaking?

11:33:54 20 A. Mr. Walter Hill.

11:33:55 21 Q. And who was the person speaking about the Leayle

11:34:00 22 Benjamin case?

11:34:00 23 A. Mr. Walter Hill.

11:36:01 24 (Recording played)

11:36:01 25 MS. LAKE: Can you stop right here?

11:36:02 1 BY MS. LAKE:

11:36:02 2 Q. And at this point, what are we seeing in the view?

11:36:04 3 A. That is Mr. Angelo Hill getting back into the
11:36:07 4 vehicle that he came down in, and traveling to meet with
11:36:10 5 myself and Task Force Agent Mark Joseph.

11:36:12 6 Q. And he's traveling alone?

11:36:14 7 A. Yes.

11:36:14 8 MS. LAKE: If you just play the rest of it.

11:36:36 9 (Recording played)

11:36:36 10 BY MS. LAKE:

11:36:36 11 Q. Is Walter Hill any more in the video?

11:36:39 12 A. No.

11:36:40 13 MS. LAKE: I have nothing further, Your Honor.

11:36:41 14 THE COURT: All right. Thank you.

11:36:42 15 Attorney Mingolla?

11:36:45 16 MR. MINGOLLA: Yes, Your Honor.

11:37:08 17 May I approach?

11:37:09 18 THE COURT: Yes.

11:37:13 19 FURTHER CROSS-EXAMINATION

11:37:13 20 BY MR. MINGOLLA:

11:37:29 21 Q. Agent Querrard, you -- we've discussed that we're
11:37:41 22 not going to discuss authentication, so I shan't get
11:37:45 23 into that. But I think I'm obliged to ask you a
11:37:49 24 question, and that is as follows.

11:37:51 25 There are two copies of transcripts, do you agree,

11:37:56 1 of the --

11:37:56 2 MS. LAKE: Objection. Relevance, exceeds the
11:37:59 3 scope of the issue of consent, Your Honor.

11:38:01 4 THE COURT: I haven't heard the whole question.

11:38:03 5 MR. MINGOLLA: I beg your pardon, sir?

11:38:05 6 THE COURT: No, ask your question.

11:38:06 7 MR. MINGOLLA: Thank you.

11:38:06 8 BY MR. MINGOLLA:

11:38:07 9 Q. There are two copies of this transcript, are there
11:38:09 10 not?

11:38:11 11 MS. LAKE: Objection. Relevance, Your Honor.

11:38:13 12 MR. MINGOLLA: The relevance is the fact --

11:38:15 13 THE COURT: Sustained.

11:38:19 14 BY MR. MINGOLLA:

11:38:19 15 Q. Who did the translation -- well, let me -- I'm
11:38:24 16 getting ahead of myself. You'll have noted -- it's not
11:38:29 17 up there now, but you will have noted that the date on
11:38:31 18 the bottom of those videotapes was October 22nd, and yet
11:38:36 19 they were recorded on October 20th.

11:38:42 20 Why would it be recorded on a machine, that is to
11:38:45 21 say, on a device, the recording device, why would it be
11:38:49 22 recorded as the 22nd when it took place on the 20th?

11:38:52 23 MS. LAKE: Objection. Relevance. Exceeds the
11:38:55 24 issue of the scope of consent, Your Honor.

11:38:57 25 THE COURT: All right. Sustained.

11:39:03 1 BY MR. MINGOLLA:

11:39:05 2 Q. Who translated -- then let me get to, who
11:39:09 3 translated these -- the audio portions?

11:39:12 4 MS. LAKE: Objection, Your Honor. Relevance.
11:39:15 5 Exceeds the scope of consent.

11:39:16 6 THE COURT: All right. Sustained.

11:39:30 7 MR. MINGOLLA: Your Honor, there are two
11:39:32 8 transcripts. They are both different from one another.
11:39:37 9 My query --

11:39:40 10 THE COURT: Let's see if we can move on. I
11:39:42 11 have sustained the objection.

11:39:43 12 This is a suppression hearing. We're focused on
11:39:45 13 what, if anything, is constitutionally infirm with what
11:39:51 14 the government did in obtaining the utterances of your
11:39:54 15 client.

11:39:54 16 So as I understand, there is a conversation at
11:39:58 17 issue and we're trying to assess whether there is
11:40:01 18 something constitutionally infirm. So I understand your
11:40:04 19 position. I've sustained the objection.

11:40:05 20 Ask your next question.

11:40:21 21 BY MR. MINGOLLA:

11:40:21 22 Q. The translators, whomever they might be, are they
11:40:25 23 familiar with the fact that here in the Virgin Islands
11:40:29 24 and throughout the Caribbean, there's a certain patois,
11:40:36 25 if you will, or an argot?

11:40:41 1 Are they familiar with West Indian phrases that are
11:40:47 2 distinctly different than conventional, let's say,
11:40:51 3 American English?

11:40:53 4 MS. LAKE: Objection. Relevance.

11:40:55 5 THE COURT: Sustained.

11:40:58 6 BY MR. MINGOLLA:

11:40:58 7 Q. And I'll ask you again, because again, I'm sorry, I
11:41:01 8 must have -- did you obtain, under Title III, any
11:41:18 9 permission to make this bug, this recording?

11:41:25 10 MS. LAKE: Objection, Your Honor. Relevance.

11:41:28 11 MR. MINGOLLA: It's not, it's not --

11:41:29 12 THE COURT: Hold on. Stop.

11:41:31 13 If you can answer. Go ahead.

11:41:33 14 THE WITNESS: I do.

11:41:33 15 BY MR. MINGOLLA:

11:41:33 16 Q. From whom?

11:41:37 17 A. From this Court, from the AUSA's office, and it's a
11:41:41 18 consensual from Mr. Angelo Hill.

11:41:46 19 Q. And --

11:41:47 20 THE COURT: Let's make sure the record is
11:41:48 21 clear. Let's move on. This is just confusing the
11:41:51 22 record. It's not aiding in getting to the end here.

11:41:55 23 MR. MINGOLLA: All right, Judge. Very well.

11:41:56 24 THE COURT: If it's an interception of a wire,
11:41:58 25 that is like a phone line, then Title III is implicated.

11:42:04 1 If it is not, then Title III is not necessarily
11:42:06 2 implicated.

11:42:06 3 So what the witness said is really a matter for the
11:42:12 4 Court to say what's essential under the law, and
11:42:16 5 factually, it's not what occurred precisely in this
11:42:20 6 case.

11:42:20 7 Go ahead. Next question.

11:42:27 8 MR. MINGOLLA: My reading of Title III says it
11:42:29 9 requires an affidavit --

11:42:30 10 THE COURT: This is not the time to argue.

11:42:31 11 Just ask the question. Let's get the evidence on
11:42:34 12 the record and then we can go on to other matters.

11:42:37 13 MR. MINGOLLA: Very well, sir.

11:42:47 14 BY MR. MINGOLLA:

11:42:47 15 Q. Now --

11:42:51 16 MR. MINGOLLA: I heard Your Honor, that Your
11:42:53 17 Honor, I don't know if reproach is the right word
11:42:56 18 mentioned, that they, mentioned that you were not going
11:42:58 19 to -- Your Honor was not going to get into Stark, as I
11:43:02 20 recall. So, if I recall correctly, so I won't get into
11:43:09 21 Stark or 901 at this time, although I dearly want to.

11:43:25 22 For the record, the copies that were made for the
11:43:36 23 defendants that I heard, including my own, were
11:43:43 24 distinctly less clear than this tape -- this video we
11:43:47 25 just saw.

11:43:50 1 BY MR. MINGOLLA:

11:43:50 2 Q. Agent Querrard, the question is this: Do you know
11:43:53 3 whether this, the original audio/visual tape was
11:44:00 4 enhanced in any way subsequent to its being made?

11:44:05 5 MS. LAKE: Objection. Relevance.

11:44:07 6 THE COURT: Sustained.

11:44:23 7 MR. MINGOLLA: Now, I'll wrap this up, Judge.

11:44:36 8 BY MR. MINGOLLA:

11:44:36 9 Q. In AUSA -- in the government's objection to my
11:44:42 10 predecessor's motion to suppress, the issue came up that
11:44:48 11 my client was, had no standing because he was not an
11:44:53 12 aggrieved party.

11:44:59 13 Would you agree, Agent Querrard, that my client,
11:45:03 14 Mr. Walter Hill, was implicated in, I believe, paragraph
11:45:12 15 37 of the superseding indictment?

11:45:15 16 MS. LAKE: Objection. Relevance.

11:45:17 17 THE COURT: Sustained.

11:45:31 18 BY MR. MINGOLLA:

11:45:32 19 Q. And this device that was placed on his arm
11:45:46 20 allegedly, was that there -- strike that.

11:45:54 21 You mentioned that there was a device placed on his
11:45:58 22 arm, and then you seem to have acceded to the fact that
11:46:03 23 there was another device above, in another, in a
11:46:07 24 container, or in something, not on his body.

11:46:14 25 Were both of these devices in use simultaneously,

11:46:24 1 or was one used, and then for whatever reason that
11:46:30 2 device ceased being used and another device was used?

11:46:36 3 By "device" I'm talking about the two items, either
11:46:38 4 this alleged bug on his, on his naked arm, if he's
11:46:44 5 wearing a short-sleeve shirt, or the cup. Was there two
11:46:52 6 separate, was there one used and then that was stopped
11:46:57 7 and then another one used? Or were they used
11:47:00 8 simultaneously?

11:47:01 9 MS. LAKE: Objection. Relevance.

11:47:02 10 THE COURT: Overruled. If you can answer it.
11:47:05 11 Go ahead.

11:47:06 12 THE WITNESS: Yes, they were both used
11:47:07 13 simultaneously, at the same time.

11:47:17 14 BY MR. MINGOLLA:

11:47:17 15 Q. Whereabouts on his arm was it?

11:47:19 16 MS. LAKE: Objection. Relevance.

11:47:20 17 THE COURT: Sustained.

11:47:28 18 MR. MINGOLLA: You surely can't answer this.

11:47:29 19 BY MR. MINGOLLA:

11:47:29 20 Q. What was the other device placed in, a coffee cup,
11:47:33 21 tin can, Coca Cola can, what?

11:47:36 22 MS. LAKE: Objection. Relevance.

11:47:37 23 THE COURT: I think it's been asked and
11:47:39 24 answered. I think he said it was a cup.

11:47:39 25

11:47:39 1 BY MR. MINGOLLA:

11:47:45 2 Q. What kind of cup? Styrofoam cup, plastic cup,
11:47:49 3 metal cup?

11:47:51 4 MS. LAKE: Objection. Relevance.

11:47:52 5 THE COURT: Sustained.

11:47:53 6 MR. MINGOLLA: I think it's -- I'll object to
11:47:57 7 that, Your Honor. I think it's relevant. But again,
11:48:01 8 I'll defer.

11:48:10 9 Just a couple more questions for you, Agent. I
11:48:13 10 appreciate your patience.

11:48:20 11 BY MR. MINGOLLA:

11:48:21 12 Q. Did you have -- you had a conversation with
11:48:31 13 Mr. Angelo Hill prior to this alleged recording between
11:48:39 14 he and my client at the Hill parking lot. Did you brief
11:48:43 15 him as to what you wished him to ask?

11:48:50 16 A. Basically he was instructed to provide any
11:48:53 17 information regarding the investigation.

11:48:56 18 Q. By whom?

11:49:01 19 A. Excuse me?

11:49:02 20 Q. Who instructed him, if you recall?

11:49:04 21 A. Myself and Task Force Officer Mark Joseph.

11:49:07 22 Q. How long did that take, approximately? Just
11:49:11 23 ball-park figure. Hour, two, three?

11:49:13 24 A. Just a few minutes. We prior -- we had interviews
11:49:16 25 with Mr. Angelo Hill prior to this date.

11:49:18 1 Q. And about how long were those interviews with
11:49:21 2 Mr. Hill, in the aggregate, if you will?

11:49:24 3 MS. LAKE: Objection. Relevance. Exceeds the
11:49:27 4 scope of --

11:49:27 5 THE COURT: Sustained.

11:49:28 6 BY MR. MINGOLLA:

11:49:29 7 Q. But it can be said that you did indeed brief him,
11:49:32 8 however long it took, you briefed him prior to his
11:49:36 9 meeting with my client, Mr. Walter Hill, correct?

11:49:42 10 A. Generally, yes.

11:49:47 11 Q. All right. And was his attorney -- Mr. King, was
11:50:03 12 he present at that time?

11:50:04 13 MS. LAKE: Objection. Relevance.

11:50:06 14 THE COURT: Sustained.

11:50:17 15 MR. MINGOLLA: Before I forget, Judge, I want
11:50:19 16 to place on the record that, an objection, that I'm
11:50:21 17 going to file an appeal, with no authentication was done
11:50:25 18 on this matter. It was not done, anything other than
11:50:34 19 mere procedural. It was nothing personal. I need it on
11:50:38 20 the record because -- it doesn't matter why.

11:50:53 21 BY MR. MINGOLLA:

11:50:53 22 Q. Did anyone --

11:50:56 23 MR. MINGOLLA: I have maybe two more questions.

11:50:58 24 BY MR. MINGOLLA:

11:50:58 25 Q. Did any other defense attorney -- because again,

11:51:01 1 I'm a Johnny-come-lately here, so forgive me if I'm
11:51:05 2 asking something that's been answered already, but I
11:51:08 3 wasn't here.

11:51:09 4 Did any other defendants -- or strike that -- their
11:51:15 5 counsel, indicate -- how should we put it -- the
11:51:25 6 incomprehensibility of the tapes we just saw, these
11:51:27 7 audio/video tapes?

11:51:29 8 By "incomprehensibility, I mean the difficulty in
11:51:33 9 understanding what was being said and the lack of
11:51:35 10 clarity. Did anyone besides myself complain about this?

11:51:39 11 MS. LAKE: Objection. Relevance.

11:51:40 12 THE COURT: Sustained.

11:51:43 13 MR. MINGOLLA: I think it's important, Your
11:51:45 14 Honor, that --

11:51:46 15 THE COURT: I know you -- I understand what
11:51:48 16 your question is, but I've ruled. So ask your next
11:51:51 17 question.

11:51:51 18 The record is clear. Our court reporter is getting
11:51:54 19 everything.

11:51:55 20 MR. MINGOLLA: Very well, sir.

11:52:23 21 I shall also, for the record, perhaps file a motion
11:52:31 22 for ineffective counsel on my own behalf, regarding the
11:52:35 23 suppression hearing --

11:52:36 24 THE COURT: Let's do this, Attorney Mingolla:
11:52:38 25 If you have questions for the evidence, that the

11:52:40 1 evidence can be put on the record, go and ask. If not,
11:52:46 2 you can yield the witness.

11:52:52 3 MR. MINGOLLA: I'm pretty much done with him --
11:52:55 4 excuse me, Agent Querrard. I say him.

11:53:19 5 BY MR. MINGOLLA:

11:53:19 6 Q. Last question.

11:53:20 7 Was there any, was there any contraband of any kind
11:53:25 8 found on my client, Mr. Hill -- Mr. Walter Hill, at any
11:53:34 9 time?

11:53:35 10 MS. LAKE: Objection. Relevance.

11:53:37 11 THE COURT: Overruled.

11:53:39 12 THE WITNESS: Not that I'm aware of.

11:53:42 13 BY MR. MINGOLLA:

11:53:42 14 Q. And since you and Agent Joseph were, I believe,
11:53:47 15 correct me if I'm wrong, were, so to speak, the lead
11:53:51 16 agents on this matter, you would be in a position to
11:53:53 17 know, correct?

11:53:59 18 A. I'm confused by the question that you're asking.

11:54:02 19 Q. The question I'm asking simply --

11:54:06 20 MR. MINGOLLA: He's answered. He didn't find
11:54:09 21 anything. I don't need to repeat it. That's okay.
11:54:12 22 Thank you.

11:54:12 23 No further questions of this client -- for this --
11:54:18 24 for Agent Querrard.

11:54:20 25 THE COURT: All right. Attorney Lake, are you

11:54:22 1 done with this witness?

11:54:23 2 MS. LAKE: Yes, Your Honor. We ask --

11:54:24 3 THE COURT: Agent Querrard, thank you for your
11:54:27 4 testimony. You may step down.

11:54:28 5 THE WITNESS: Thank you, Your Honor.

11:54:29 6 (Witness withdrew from stand)

11:54:29 7 THE COURT: Any other testimony?

11:54:30 8 MS. LAKE: Yes, Your Honor. We ask that
11:54:32 9 Exhibit 1a be received into evidence for purposes of the
11:54:34 10 suppression hearing?

11:54:35 11 THE COURT: Any objection, Attorney Mingolla?

11:54:37 12 MR. MINGOLLA: I'm sorry, I didn't hear the
11:54:39 13 question.

11:54:39 14 THE COURT: You have any objection to the
11:54:42 15 recording being admitted?

11:54:43 16 MR. MINGOLLA: Yes, I do.

11:54:46 17 THE COURT: All right. 1 and 1a are admitted.

11:54:48 18 MR. MINGOLLA: I'm sorry, I didn't hear what
11:54:50 19 you said, Your Honor. I'm sorry.

11:54:52 20 THE COURT: All right. They're admitted.

11:54:53 21 MR. MINGOLLA: They are admitted.

11:54:55 22 THE COURT: Yes.

11:54:56 23 MR. MINGOLLA: Over my objection. Thank you.

11:54:59 24 MS. LAKE: We would ask to call Rafael
11:55:10 25 Fernandez.

11:55:10 1 THE COURT: All right.

11:55:11 2 (Witness sworn)

11:55:14 3 THE WITNESS: I do.

11:55:16 4 THEREUPON, RAFAEL FERNANDEZ, having been duly
11:55:18 5 sworn, was examined and testified as follows:

11:55:18 6 DIRECT EXAMINATION

11:55:20 7 BY MS. LAKE:

11:55:28 8 Q. Good morning, Agent. Please state your name for
11:55:32 9 the record?

11:55:32 10 A. My name is Rafael A. Fernandez; R-a-f-a-e-l,
11:55:34 11 F-e-r-n-a-n-d-e-z.

11:55:39 12 Q. And who do you work for?

11:55:40 13 A. I work for the Federal Bureau of Investigation.

11:55:42 14 Q. And how long have you been so employed?

11:55:45 15 A. I've been employed for approximately three years.

11:55:47 16 Q. And are you familiar with the Tapia investigation?

11:55:51 17 A. Yes, I am.

11:55:53 18 Q. Are you familiar with the Angelo Hill
11:55:56 19 investigation?

11:55:56 20 A. Yes, I am.

11:55:57 21 Q. And are you familiar with the Walter Hill
11:55:59 22 investigation?

11:55:59 23 A. Yes, I am.

11:56:00 24 Q. Were you involved in the surveillance, if there
11:56:05 25 were -- was any, during the time that Angelo Hill and

11:56:08 1 Walter Hill had a conversation on St. John?

11:56:10 2 A. Yes, I was part of the surveillance team during the
11:56:13 3 recording.

11:56:14 4 Q. And what was -- what were the circumstances --
11:56:18 5 strike that.

11:56:19 6 What did you observe between Angelo Hill and Walter
11:56:23 7 Hill while you were conducting surveillance?

11:56:26 8 A. Well, I was in a position to actually oversee the
11:56:30 9 conversation. After we were alerted by Agent Querrard
11:56:33 10 that the device was on Angelo Hill's person, we actually
11:56:36 11 observed Angelo Hill show up to the place of business.

11:56:40 12 We waited and waited for some time until Walter
11:56:44 13 Hill also showed up to the place of business.

11:56:45 14 We observed them step outside the place of business
11:56:49 15 and have a conversation.

11:56:51 16 Q. And what did you observe in terms of their
11:56:53 17 mannerisms between Walter Hill and Angelo Hill during
11:56:58 18 the course of this conversation?

11:56:59 19 A. We conducted, you know, essentially the
11:57:02 20 surveillance. We want to make sure they were meeting.
11:57:04 21 We took some photographs. And we also just noticed that
11:57:07 22 they were just having a conversation. We also noticed
11:57:14 23 that Mr. -- well, Angelo Hill had the recording device
11:57:16 24 and the conversation was being recorded.

11:57:18 25 THE COURT: Who was there? Who did you

11:57:20 1 observe.

11:57:20 2 THE WITNESS: Angelo Hill and Walter Hill.

11:57:23 3 THE COURT: Did you observe anyone else?

11:57:25 4 THE WITNESS: No, I did not.

11:57:27 5 THE COURT: All right. And explain what, in
11:57:30 6 terms of mannerism, you observed on the part of Walter
11:57:36 7 Hill and Angelo Hill.

11:57:38 8 THE WITNESS: We observed, just me in
11:57:40 9 particular, just a casual conversation. When Walter
11:57:43 10 Hill showed up they both said -- they walked outside,
11:57:48 11 they leaned over a jeep and had a conversation, pretty
11:57:50 12 relaxed, it seems like to me. It was just a normal
11:57:55 13 conversation that I would have with a friend.

11:57:59 14 BY MS. LAKE:

11:57:59 15 Q. And at the conclusion of the conversation, what did
11:58:02 16 you see Walter Hill do?

11:58:04 17 A. We saw that he left out the vicinity. At that
11:58:09 18 point we noticed, we -- you know, I guess Angelo Hill
11:58:14 19 had communicated to the case agent, Shawn Querrard, the
11:58:17 20 conversation was over, and we just saw that Walter Hill
11:58:19 21 got in his vehicle and left.

11:58:21 22 Q. And then what did you observe Angelo Hill do?

11:58:23 23 A. Similar thing. He got into his vehicle and I guess
11:58:27 24 met with Shawn Querrard and Task Force Agent Mark
11:58:31 25 Joseph.

11:58:31 1 Q. So Walter Hill and Angelo Hill left separately?

11:58:34 2 A. Yes.

11:58:36 3 Q. And did you have an opportunity to observe the
11:58:39 4 audio and video recording of that conversation?

11:58:42 5 A. I did.

11:58:43 6 THE COURT: All right. Let's move on. I've
11:58:44 7 observed it.

11:58:45 8 Any other questions for this witness?

11:58:47 9 MS. LAKE: No further questions, Your Honor.

11:58:48 10 THE COURT: Attorney Mingolla?

11:58:49 11 MR. MINGOLLA: Just one or two.

11:58:51 12 CROSS-EXAMINATION

11:58:51 13 BY MR. MINGOLLA:

11:58:53 14 Q. Was there a time when --

11:58:59 15 MR. MINGOLLA: You know, I'm terribly sorry.
11:59:01 16 My hearing stinks.

11:59:03 17 BY MR. MINGOLLA:

11:59:03 18 Q. What is your name agent again?

11:59:04 19 A. My name is Rafael Fernandez.

11:59:08 20 Q. Thank you.

11:59:10 21 Agent Fernandez -- by the way, where are you based?

11:59:18 22 A. I'm based here in St. Thomas.

11:59:19 23 Q. Okay. How long have you been here?

11:59:22 24 A. I've been here for approximately, going on three
11:59:27 25 years. Two and a half years.

11:59:28 1 Q. Okey-doke.

11:59:31 2 And you indicated to the U.S. attorney's -- the
11:59:43 3 government, that you had observed Mr. Walter and,
11:59:49 4 Mr. Walter Hill and Mr. Angelo Hill for a period of
11:59:56 5 time, but you didn't hear what they were saying. Is
11:59:59 6 that correct?

12:00:00 7 A. That is correct.

12:00:01 8 Q. Okay. But you assume that it was going to be
12:00:04 9 recorded on some recording device, correct?

12:00:07 10 A. That's correct.

12:00:07 11 Q. Okay. And did you install the recording device?

12:00:17 12 MS. LAKE: Objection. Relevance.

12:00:18 13 THE COURT: Overruled.

12:00:18 14 THE WITNESS: I did not personally install a
12:00:21 15 recording device for Mr. Angelo Hill.

12:00:21 16 BY MR. MINGOLLA:

12:00:23 17 Q. Who did?

12:00:24 18 A. Agent Shawn Querrard.

12:00:28 19 Q. And you say -- you indicated that --

12:00:45 20 MR. MINGOLLA: This is about my last question,
12:00:47 21 Judge.

12:00:48 22 BY MR. MINGOLLA:

12:00:48 23 Q. You indicated, you indicated that, if I understood
12:00:54 24 you properly -- and please correct me, obviously, if I'm
12:00:58 25 wrong -- but didn't you indicate that you saw

12:01:02 1 Mr. Walter Hill after meeting -- after this alleged
12:01:09 2 meeting was over?

12:01:10 3 A. Mr. Walter Hill drove away. What I recall, and I
12:01:17 4 would probably have to refresh my memory, he left the
12:01:21 5 vicinity.

12:01:21 6 Q. How?

12:01:22 7 A. Angelo Hill got in his vehicle and also left, and
12:01:24 8 we were alerted that the conversation was over. And at
12:01:26 9 the scene we actually terminated surveillance.

12:01:29 10 Q. Well, you had seen the conversation was over, but
12:01:33 11 the fact they were separated?

12:01:35 12 A. That's correct.

12:01:36 13 Q. And you were watching it all, correct?

12:01:40 14 A. That's correct.

12:01:40 15 Q. And Mr. Angelo [sic] Hill, how did he depart?

12:01:45 16 A. Again, I have to review some of the reports. I
12:01:47 17 just remember him departing. I don't recall
12:01:51 18 specifically if he was picked up or he walked.

12:01:53 19 But I knew that Angelo Hill got in a vehicle and
12:01:56 20 left.

12:01:57 21 Q. Well, you just contradicted yourself. You said he
12:02:00 22 got in the vehicle and left, but you don't know whether
12:02:03 23 he -- earlier you said you don't know whether he walked
12:02:05 24 or how he left. So can you be a little more specific?

12:02:10 25 Isn't it true you don't know how -- whether he

12:02:13 1 walked, took a car or what?

12:02:14 2 A. He came in a walk. And again, when the
12:02:17 3 conversation was over, we saw him -- and again I have to
12:02:21 4 confirm with my other surveillance partners at the time.
12:02:24 5 I was literally over a building watching the
12:02:29 6 conversation. He left in the vehicle. I just have to
12:02:32 7 confirm specifically what vehicle he got into, if
12:02:35 8 someone picked him up or not.

12:02:37 9 Q. And lastly, you -- isn't it true that there were
12:02:50 10 periods of time where you lost contact, let's phrase it
12:02:55 11 like that, with your informant, Mr. Angelo Hill?

12:03:02 12 By "lost contact," I mean lost contact, couldn't
12:03:05 13 find him, lost him in St. John, correct?

12:03:09 14 A. I wasn't in contact with him personally.

12:03:14 15 Q. Right. But are you aware there was a period of
12:03:17 16 time -- into whose custody was this recording, these two
12:03:23 17 recordings, into whose custody? What was the chain of
12:03:27 18 custody for those recordings?

12:03:30 19 Who removed this alleged device on the arm and who
12:03:37 20 took them, whatever it was --

12:03:40 21 MS. LAKE: Objection. Relevance.

12:03:42 22 THE COURT: Sustained.

12:03:42 23 BY MR. MINGOLLA:

12:03:50 24 Q. I guess I never really did get an answer to those
12:03:55 25 questions. Did you respond to my question? I'm sorry

12:03:58 1 if you did and I don't remember.

12:03:59 2 Was there a time when you lost contact, you,
12:04:03 3 personally, lost contact with Angelo Hill and/or Mr. --
12:04:12 4 moreover, Mr. Walter Hill in St. John that day on the
12:04:15 5 22nd -- on the 20th?

12:04:17 6 MS. LAKE: Objection. Asked and answered.

12:04:19 7 THE COURT: Overruled.

12:04:23 8 THE WITNESS: When you say "lost contact," I
12:04:25 9 never had contact with either. We conducted
12:04:29 10 surveillance of the conversation.

12:04:31 11 BY MR. MINGOLLA:

12:04:31 12 Q. So you were pre-positioned in a --

12:04:34 13 A. We were pre-positioned in a position where we knew
12:04:37 14 the conversation would take place, and we were there to
12:04:39 15 make sure that the conversation took place based on our
12:04:43 16 operational guidelines.

12:04:45 17 We observed the two parties meet, have a
12:04:47 18 conversation, and we observed the two parties depart
12:04:50 19 each other's presence.

12:04:51 20 So as far as contact, I'm a little confused about
12:04:54 21 the question.

12:04:55 22 Q. Very well. And again, lastly, just for clarity's
12:05:16 23 sake, the chain of custody for that videotape went, to
12:05:25 24 the best of your knowledge, went from whom to whom?

12:05:28 25 MS. LAKE: Objection. Relevance.

12:05:30 1 THE COURT: Sustained.

12:05:35 2 BY MR. MINGOLLA:

12:05:36 3 Q. Does anyone know there was a chain of custody?

12:05:39 4 MS. LAKE: Objection. Exceeds the scope of
12:05:41 5 suppression hearing --

12:05:42 6 THE COURT: All right. Sustained.

12:05:45 7 MS. LAKE: -- relevance.

12:05:49 8 MR. MINGOLLA: Okay. No further questions.

12:05:51 9 Thank you, Agent Fernandez.

12:05:54 10 THE COURT: Thank you, Attorney Mingolla.

12:05:57 11 No further questions for Agent Fernandez, correct?

12:06:00 12 MS. LAKE: No further questions.

12:06:02 13 THE COURT: Thank you, Agent Fernandez. You
12:06:05 14 may step down.

12:06:05 15 (Witness withdrew from stand)

12:06:05 16 MS. LAKE: No, your Honor.

12:06:06 17 THE COURT: Attorney Mingolla, any testimony?

12:06:08 18 MR. MINGOLLA: No, sir.

12:06:09 19 THE COURT: All right. Let's see. The
12:06:10 20 government has the burden. You want to be heard
12:06:14 21 briefly?

12:06:14 22 MS. LAKE: Yes, Your Honor.

12:06:14 23 ARGUMENT BY THE GOVERNMENT

12:06:19 24 MS. LAKE: As to the issue of suppression of
12:06:20 25 the conversation between Walter Hill and Angelo Hill,

12:06:26 1 the conversation was -- Angelo Hill gave consent to the
12:06:32 2 government to record the conversation and to engage in a
12:06:35 3 conversation with Walter Hill.

12:06:37 4 Based on the consent given by Angelo Hill, there is
12:06:42 5 no expectation of privacy on the part of Walter Hill,
12:06:45 6 because Walter Hill has no expectation of privacy.

12:06:51 7 MR. MINGOLLA: Your Honor, is there a question
12:06:53 8 here?

12:06:53 9 THE COURT: I'm sorry. Attorney Mingolla,
12:06:55 10 we're having argument now.

12:06:57 11 You'll get a chance to argue your position as well.
12:07:00 12 Go ahead, Attorney.

12:07:02 13 MS. LAKE: There is -- Walter Hill has no
12:07:05 14 expectation of privacy because the conversation -- one
12:07:08 15 party consented to the conversation. Based on case law,
12:07:12 16 Walter Hill has no expectation of privacy.

12:07:16 17 Because there's no expectation of privacy, the
12:07:22 18 defendant is not entitled to any 4th Amendment
12:07:24 19 protection in a conversation with Angelo Hill. So based
12:07:28 20 on that --

12:07:28 21 THE COURT: You would agree if the conversation
12:07:30 22 wasn't voluntary, then there might be a constitutional
12:07:32 23 issue, correct?

12:07:33 24 That is, forgetting Angelo Hill for the moment and
12:07:36 25 him giving consent to record this, if there was a gun to

12:07:40 1 Mr. Walter Hill's head, for instance, then the
12:07:45 2 Constitution might be implicated, correct?

12:07:47 3 MS. LAKE: If there's a gun to his head --

12:07:49 4 THE COURT: Correct? Yes or no.

12:07:52 5 MS. LAKE: If the Court finds there's no
12:07:54 6 consent, then yes, there would be, then the defendant
12:07:57 7 would have an expectation of privacy. But only if the
12:08:00 8 Court found there was no consent.

12:08:02 9 To answer your question, that specific
12:08:04 10 hypothetical, the gun to Angelo Hill's head, admitted
12:08:13 11 give consent, then yes, Walter Hill would have privacy
12:08:18 12 in that conversation.

12:08:19 13 THE COURT: My question was if Walter Hill was
12:08:22 14 being forced or coerced or anything. Not Angelo Hill,
12:08:27 15 Walter Hill. Your position is the Constitution would
12:08:30 16 not be implicated.

12:08:31 17 MS. LAKE: If Walter Hill was coerced in this
12:08:33 18 conversation, he had no Fourth Amendment expectation of
12:08:36 19 privacy.

12:08:36 20 If he was coerced in that conversation, that's
12:08:39 21 another analysis whether or not there's a Fifth
12:08:42 22 Amendment violation or whether or not, based on the
12:08:44 23 Starks foundational elements, there's a lack of
12:08:46 24 foundation in the conversation. But there's no
12:08:49 25 expectation of privacy when one party gives consent.

12:08:52 1 What the Court is mentioning is maybe some sort of
12:08:56 2 entrapment or coercion of the conversation. That does
12:08:59 3 not negate the defendant's expectation of privacy in the
12:09:03 4 conversation.

12:09:03 5 THE COURT: All right. Thank you, Attorney
12:09:05 6 Lake.

12:09:05 7 Attorney Mingolla, briefly.

12:09:25 8 ARGUMENT BY THE DEFENDANT

12:09:25 9 MR. MINGOLLA: For once I don't have much to
12:09:26 10 say. I think that the testimony has spoken for itself.

12:09:43 11 I believe Mr. Hill was coerced -- Walter Hill was
12:09:46 12 coerced into a conversation.

12:09:49 13 I believe that his rights to the Fourth, Sixth and
12:09:57 14 Fourth amendments were violated by said conversation. I
12:10:03 15 believe that the incoherence of the disks provided is
12:10:12 16 objectionable, provided to the defendants.

12:10:19 17 I believe that under Title III, my belief of the --
12:10:32 18 and it's of the justice department manual, also that not
12:10:37 19 only was a warrant required to do this tap, which is
12:10:42 20 not, distinctly not, which they had asked and received
12:10:48 21 very cogent and very explicit instructions from you as
12:10:53 22 to wiretapping, and boy did they take advantage of that.

12:10:59 23 But I maintain under Title III that they had to
12:11:03 24 come to you with a proposed warrant, Agent Querrard
12:11:10 25 presumably, or Joseph, I don't know, one of them had to

12:11:13 1 come to you and get a warrant to do this tap, which did
12:11:16 2 not involve telephones.

12:11:19 3 And furthermore, to the best of my knowledge, I
12:11:22 4 don't believe that any requisite affidavit was filed by
12:11:29 5 either Mr. -- Agent Querrard nor Mr. -- nor Agent
12:11:33 6 Joseph, which is a prerequisite to getting said
12:11:39 7 permission from Your Honor do this tap -- strike that --
12:11:44 8 not tap, let me be precise, as precise as I can, bug.
12:11:50 9 Because there's a difference.

12:11:51 10 So therefore, I feel that this entire conversation
12:11:58 11 was taken under coercion, that there are other issues,
12:12:04 12 Stark issues, which can be discussed later, that it
12:12:08 13 violated Title III, by virtue of the failure to provide
12:12:16 14 the government -- Your Honor with the requisite
12:12:18 15 documents required, i.e., specifically the affidavit.

12:12:23 16 And the affidavit has to be very specific. And it
12:12:26 17 has to say precisely what it is that they expect, that
12:12:32 18 the government expects to ascertain from said
12:12:36 19 information that they obtained.

12:12:39 20 I feel that furthermore, and lastly, I think
12:12:50 21 lastly, that my client was coerced by dint of getting 12
12:12:59 22 phone calls in one hour to meet -- which phone records
12:13:02 23 will substantiate -- he gets 12 phone calls in an hour
12:13:07 24 from Angelo Hill to meet Angelo Hill directly.

12:13:11 25 And I find that a little bit untoward. I think it

12:13:17 1 smacks of coercion.

12:13:18 2 Furthermore, I believe that Agent Querrard fully
12:13:26 3 briefed Mr. Angelo Hill as to what questions to try and
12:13:33 4 use to entrap my client, which again I realize
12:13:36 5 entrapment isn't really what we're on point here, so I'm
12:13:38 6 not going to dwell on it. But he admits he briefed him,
12:13:44 7 and they clearly briefed him for more than 15 minutes.

12:13:51 8 And furthermore, last -- this is last -- Agent
12:13:55 9 Fernandez apprised the Court, testified, that whilst he
12:14:02 10 may have seen them together, he didn't hear anything.
12:14:07 11 And I believe his actual words were, it looks like they
12:14:11 12 were -- I mean, I'm paraphrasing, but it's pretty close,
12:14:14 13 it looks like they were simply having a casual
12:14:17 14 conversation.

12:14:18 15 So -- and lastly -- this is the last thing, I
12:14:29 16 swear. The clarity of the videotape -- the
12:14:32 17 audio/videotapes that I received, maybe everybody else
12:14:36 18 got ones that were crystal clear like that. I didn't.
12:14:39 19 Mine are incoherent. You can't make out what anyone is
12:14:43 20 saying.

12:14:43 21 And that's why I wanted to find out, you know, a
12:14:51 22 little about the translation work, because there are two
12:14:55 23 transcripts. Both of them are different. They are
12:14:57 24 significantly different. They are the same
12:14:59 25 conversation, but they don't contain the same

12:15:01 1 information.

12:15:01 2 There's significant differences between the
12:15:04 3 documents, which was my reason for asking how they
12:15:09 4 obtained these two different transcripts and who did the
12:15:12 5 translating. Because they're distinctly different.

12:15:17 6 They -- well, I won't go into the details now.
12:15:22 7 They are very different.

12:15:24 8 So I would put forth to this Court that this
12:15:29 9 case -- strike that -- that this, that my motion to
12:15:36 10 suppress should be sustained on those grounds, and
12:15:42 11 others that have come up in testimony; and that
12:15:47 12 furthermore, I have to put it on the record, although I
12:15:50 13 don't want to, that I will be, I will be filing, if this
12:15:57 14 is denied, I will be filing -- I have to do this Judge;
12:16:01 15 I'm not doing it to be vindictive -- will be denied, if
12:16:06 16 it's denied, I have to file a motion for appeal, and I
12:16:10 17 also will probably file a motion for ineffective
12:16:13 18 counsel.

12:16:13 19 So that's it. Thank you, sir, for listening to me.

12:16:17 20 THE COURT: All right. Thank you, Attorney
12:16:19 21 Mingolla. And of course, if there's anything you need
12:16:22 22 to file, file it. You don't need to explain or
12:16:27 23 apologize or be reserved. You have to file whatever is
12:16:31 24 needed to preserve the record and the rights of your
12:16:33 25 client.

12:16:33 1 RULING BY THE COURT

12:16:34 2 THE COURT: All right. Before the Court is a
12:16:35 3 motion to suppress. Specifically, the defense seeks to
12:16:39 4 suppress a conversation that was recorded between Walter
12:16:43 5 Hill and Angelo Hill in October of 2013.

12:16:47 6 Of course, when the Court is assessing whether
12:16:51 7 suppression is appropriate, the Court is primarily
12:16:56 8 focused on what, if any, constitutional infirmity
12:16:59 9 occurred that would cause the Court to suppress the
12:17:03 10 evidence at the center of the motion.

12:17:05 11 And here, the Court heard the testimony of two
12:17:11 12 witnesses, Agent Querrard and Agent Fernandez. Agent
12:17:16 13 Querrard did not witness the conversation personally,
12:17:22 14 was not in a position to surveil the conversation as it
12:17:25 15 occurred.

12:17:27 16 He did view a recording. And I believe in his
12:17:31 17 testimony he indicated that Walter Hill arrived on his
12:17:35 18 own and left on his own.

12:17:36 19 The Court's view of the tape doesn't indicate that,
12:17:43 20 certainly not in a way that's clear.

12:17:45 21 There was more footage of Mr. Angelo Hill getting
12:17:53 22 to his destination in a covered environment than in an
12:17:58 23 environment where you saw a lot of blue sky, blue
12:18:07 24 clouds, if I'm not mistaken, and electrical utility
12:18:09 25 wires. And occasionally, Mr. Walter Hill, it isn't

12:18:16 1 evident on the recording that Mr. Hill, Walter Hill,
12:18:19 2 that is, left without company or arrived without
12:18:25 3 company.

12:18:29 4 What is evident, though, at least what the Court
12:18:32 5 heard, is there was some conversation. The conversation
12:18:35 6 was free and loose and was primarily dominated by Walter
12:18:41 7 Hill.

12:18:41 8 The Court also heard the testimony of Agent
12:18:45 9 Fernandez, who was in a position to observe, and he
12:18:47 10 observed the arrival and departure of Walter Hill.

12:18:50 11 And that was done in a manner that indicated that
12:18:55 12 Walter Hill was, arrived on his own, left on his own and
12:19:00 13 was free to leave.

12:19:02 14 There's nothing that the Court heard or saw that
12:19:04 15 would indicate that he was not free to leave at any
12:19:07 16 time.

12:19:08 17 So, with respect to the applicable law that the
12:19:13 18 Court has to apply to those circumstances, the Court is
12:19:16 19 not convinced that suppression is appropriate.

12:19:18 20 I'll deal with the inquiry that the defense counsel
12:19:27 21 made about whether there was an affidavit or permission
12:19:31 22 required from this Court to do anything that was done
12:19:34 23 here.

12:19:34 24 First of all, the evidence is clear that there was
12:19:39 25 consent from Angelo Hill to engage in this recorded

12:19:47 1 conversation.

12:19:48 2 There is no requirement under Title III or other
12:19:53 3 section of the law or Constitution for an affidavit from
12:19:55 4 this Court or Title III authorization in order to record
12:20:01 5 a consensual conversation.

12:20:05 6 So there is no wiretap authorization on this record
12:20:14 7 for the devices that were used and the conversation that
12:20:17 8 was recorded with those devices in October 2013 between
12:20:21 9 Angelo Hill and Walter Hill.

12:20:23 10 So the record is clear, to the extent there was any
12:20:27 11 testimony, I believe from Agent Querrard, that there was
12:20:30 12 authorization from this Court for that, the Court
12:20:33 13 doesn't see anything in the record that indicates as
12:20:35 14 such. And indeed, none was required for that consensual
12:20:42 15 recording.

12:20:42 16 So the record is clear, let me make sure, from the
12:20:45 17 government, there is no such authorization from this
12:20:47 18 Court for an October 2013 recorded conversation between
12:20:52 19 Angelo Hill and Walter Hill; is that correct?

12:20:54 20 MS. LAKE: That's correct.

12:20:55 21 THE COURT: All right. Thank you. So the
12:20:56 22 record is clear.

12:20:56 23 All right. With respect to the conversation
12:21:01 24 itself, the Court wants to make clear that once consent
12:21:06 25 is given, that certainly goes a long way. The Court's

12:21:09 1 concern would be whether there's some level of coercion.

12:21:12 2 No different than if a defendant were in a
12:21:19 3 jailhouse or the police station, and the Court would
12:21:22 4 evaluate the circumstances and determine whether there
12:21:27 5 was some level of coercion to elicit some utterances.
12:21:34 6 And the Court would be concerned with some Fifth
12:21:38 7 Amendment or due process violation.

12:21:39 8 And here the Court finds nothing whatsoever that
12:21:43 9 suggests even the slightest bit of coercion that would
12:21:47 10 make this constitutionally infirm.

12:21:48 11 Mr. Walter Hill, from everything the Court has seen
12:21:52 12 and heard, was free to leave at every time. That is, he
12:21:56 13 was never in custody.

12:21:57 14 The only two people who were there were Angelo Hill
12:22:00 15 and Walter Hill, engaged in what Agent Fernandez
12:22:05 16 testified was a loose -- I don't know if he used that
12:22:09 17 word -- but looks like a free conversation between two
12:22:12 18 individuals.

12:22:13 19 What the Court heard, again, was something that was
12:22:16 20 just a loose conversation between two people who knew
12:22:19 21 each other and felt comfortable with each other.

12:22:21 22 So the question would be: Was there something else
12:22:25 23 attendant that would make this akin to where you have
12:22:29 24 some coercive sort of circumstance?

12:22:32 25 And there's none. No one else was there, no gun,

12:22:35 1 no agents, no nothing, just two familiar people engaged
12:22:40 2 in a conversation.

12:22:42 3 So the Court finds there's nothing that implicates
12:22:46 4 the Constitution in this case.

12:22:47 5 So the record is also very clear, I've heard some
12:22:53 6 discussion about the chain of custody and also about
12:22:59 7 entrapment.

12:23:01 8 Those are things that would be properly raised at
12:23:04 9 trial. They certainly don't have any bearing here, or
12:23:10 10 much, if any, bearing in the Court's assessment of
12:23:13 11 whether there's something constitutionally infirm.

12:23:15 12 The Court was more concerned with coercion of the
12:23:18 13 kind that you would have if someone was in, again, the
12:23:22 14 police station and there were ten agents in the room and
12:23:24 15 they had their guns visible, and there was a level of
12:23:29 16 questioning. That didn't happen here.

12:23:33 17 So the petition for suppression is denied.

12:23:38 18 And I believe we have a trial date. To the extent
12:23:43 19 you want to file for any relief, of course, you don't
12:23:46 20 need to apologize or even ask for permission to do that,
12:23:49 21 Attorney Mingolla. That's your prerogative. But we do
12:23:53 22 have a trial date.

12:23:54 23 So unless there's anything else that needs to be
12:23:56 24 brought up, and then -- let me ask the government first,
12:23:59 25 is there anything we need to attend to?

12:24:02 1 MS. LAKE: There is one outstanding motion,
12:24:04 2 Your Honor, a motion to consolidate the sentencings in
12:24:07 3 this matter in the related case.

12:24:10 4 THE COURT: Oh, the sentencings. All right.
12:24:12 5 We'll deal with that at some other time.

12:24:15 6 MS. LAKE: Aside from that, there are no
12:24:16 7 additional motions, Your Honor.

12:24:18 8 THE COURT: Very good.
12:24:19 9 Attorney Mingolla?

12:24:20 10 MR. MINGOLLA: There's one thing, I don't know
12:24:23 11 if now is the appropriate time. You tell me. I want to
12:24:26 12 make abundantly certain that the motion in limine that I
12:24:30 13 filed vis-a-vis the previous conviction of my client
12:24:35 14 some 22 years ago or something --

12:24:38 15 THE COURT: This is your 404(b) motion?

12:24:40 16 MR. MINGOLLA: Precisely.

12:24:41 17 THE COURT: Does the government even intend to
12:24:44 18 even bring that up in this case?

12:24:46 19 MR. LINDQUIST: No.

12:24:46 20 THE COURT: So the motion is denied as moot --
12:24:49 21 or you can withdraw the motion. The government says
12:24:52 22 they're not going bring that up.

12:24:54 23 MR. MINGOLLA: No, that's fine. That's great.

12:24:57 24 THE COURT: Anything else, Attorney Mingolla,
12:24:59 25 then?

12:24:59 1 MR. MINGOLLA: No, sir.

12:25:00 2 THE COURT: All right. Then we have a trial
12:25:01 3 date.

12:25:02 4 Let me thank counsel for a well-argued motion.

12:25:05 5 Thank you.

6 (Court in recess, 12:25 p.m.)

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9

10 CERTIFICATE

11

12 This document is hereby certified
13 to be a true and accurate transcript
14 of the foregoing proceedings.

15

16

17 /s _____ March 16, 2014
18 Chandra Kean, RMR DATE
19 Official Court Reporter

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